



This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

- + *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
- + *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
- + *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
- + *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at <http://books.google.com/>

03, SATELLITE TELEVISION ACT OF 1999

STANFORD
LIBRARIES

P18-61

HEARING

BEFORE THE

COMMITTEE ON COMMERCE,
SCIENCE, AND TRANSPORTATION

UNITED STATES SENATE

ONE HUNDRED SIXTH CONGRESS

FIRST SESSION

FEBRUARY 23, 1999

the use of the Committee on Commerce, Science, and Transportation



U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 2000

For sale by the U.S. Government Printing Office
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402

DEPOSITORY

SEP 12 2000

STANFORD UNIVERSITY
JONSSON LIBRARY

SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED SIXTH CONGRESS

FIRST SESSION

JOHN MCCAIN, Arizona, *Chairman*

TED STEVENS, Alaska
CONRAD BURNS, Montana
SLADE GORTON, Washington
TRENT LOTT, Mississippi
KAY BAILEY HUTCHISON, Texas
OLYMPIA J. SNOWE, Maine
JOHN ASHCROFT, Missouri
BILL FRIST, Tennessee
SPENCER ABRAHAM, Michigan
SAM BROWNBACK, Kansas

ERNEST F. HOLLINGS, South Carolina
DANIEL K. INOUE, Hawaii
JOHN D. ROCKEFELLER IV, West Virginia
JOHN F. KERRY, Massachusetts
JOHN B. BREAU, Louisiana
RICHARD H. BRYAN, Nevada
BYRON L. DORGAN, North Dakota
RON WYDEN, Oregon
MAX CLELAND, Georgia

MARK BUSE, *Staff Director*

MARTHA P. ALBRIGHT *General Counsel*

IVAN A. SCHLAGER, *Democratic Chief Counsel and Staff Director*

CONTENTS

	Page
Hearing held February 23, 1999	1
Statement of Senator Burns	9
Prepared statement	10
Statement of Senator Cleland	10
Prepared statement	12
Statement of Senator Dorgan	13
Prepared statement of Senator Gorton	40
Statement of Senator Kerry	13
Prepared statement	14
Statement of Senator McCain	1
Prepared statement	4
Statement of Senator Rockefeller	8
Prepared statement	8
Statement of Senator Stevens	7
Statement of Senator Wyden	13

WITNESSES

Fisher, Andrew J., executive vice president, Television Affiliates, Cox Broadcasting Company	15
Prepared statement	17
Hartenstein, Eddy, president, DIRECTV	19
Prepared statement	21
Kimmelman, Gene, co-director, Consumers Union	24
Prepared statement	26

APPENDIX

Fritts, Edward O., president and CEO, National Association of Broadcasters, letter dated February 25, 1999 to Senator McCain	53
Hollings, Hon. Ernest F., U.S. Senator from South Carolina, prepared statement	52
Inouye, Hon. Daniel K., U.S. Senator from Hawaii, prepared statement	52
Millett, Sharon, 1999 president, National Association of Realtors®, prepared statement	56
Northpoint Technology, Inc., prepared statement	53
Simmon, Michael, CPM, 1999 President, Institute of Real Estate Management®, prepared statement	56
Snowe, Hon. Olympia J., U.S. Senator from Maine, prepared statement	51

S. 303, SATELLITE TELEVISION ACT OF 1999

TUESDAY, FEBRUARY 23, 1999

**U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
*Washington, DC.***

The committee met, pursuant to notice, at 9:30 a.m., in room SR-253, Russell Senate Office Building, Hon. John McCain (chairman of the committee) presiding.

Staff members assigned to this hearing: Lauren Belvin, Republican senior counsel; and Paula Ford, Democratic senior counsel.

STATEMENT OF HON. JOHN MCCAIN, U.S. SENATOR FROM ARIZONA

The CHAIRMAN. Good morning. The Senate Commerce Committee meets today in an attempt to solve the major consumer problem that will occur when satellite television subscribers begin losing their distant network TV stations this Sunday.

I would like to welcome the witnesses who are with us today to help us find a solution to this problem. Andy Fisher, executive vice president of Cox Broadcasting, representing the National Association of Broadcasters, Eddy Hartenstein, who is the president of DIRECTV, representing the satellite TV industry, and Gene Kimmelman, co-director of the Washington Office of Consumer's Union.

Mr. Kimmelman is representing that long-suffering and often overlooked constituency, the average consumer.

Before we hear from our witnesses, let me tell you how we got to where we are today. The blank screens that satellite TV subscribers will begin seeing next Sunday are the culmination of a long and bitter court fight between broadcast TV companies and satellite TV companies that was won by the broadcasters.

Despite over 6 months of intensive congressional efforts to avert this shut-off, the broadcast and satellite TV industries remain unable to compromise their differences in a way that would serve consumers' interest as much as their own.

After endless months of litigating, lawyering, and lobbying, these industries are still at odds over one question, should satellite TV subscribers be allowed to continue receiving distant network stations when they can also receive local network stations, either off the air, or as part of their monthly satellite TV service? That is the question.

When all is said and done, this litigation shoot-out is going to claim a lot of innocent victims. The first, of course, are the esti-

mated 2 million satellite TV subscribers who are about to have their plug suddenly pulled on their distant network signals. This is unfortunate, because these people are customers, not accomplices.

The other less obvious victims are the Nation's cable TV subscribers, who continue to endure cable rate increases that outstrip by many multiples the price increases of other consumer goods and services, and that is with Federal rate regulation in effect.

Cable TV rate regulation ends on March 31, 1 month after the satellite TV companies have to begin dropping their subscribers' distant network stations. Unless satellite television improves its ability to compete effectively with cable television for the hearts and eyeballs of the multichannel video audience, there will be no competitive check on cable rates to take the place of rate regulation on March 31.

Whatever the extent of the damage individual subscribers incur when they lose their distant network signals, the damage to satellite TV's competitive standing will be even worse. Quite simply, the shut-offs could not occur at a worse time, unless perhaps in the middle of the Super Bowl.

The committee has not just awakened to these problems. Last year, I sponsored legislation that would have at long last cleared the way for satellite TV companies to carry local TV stations. I am sponsoring the same legislation again this year. The broadcasters and the satellite TV companies both endorse current carriage of local signals. Although this legislation would solve satellite TV's local signal problem, making local signals available still does not answer the question of whether satellite TV subscribers ought to be forced to drop their distant network stations in return.

An undetermined number of subscribers want to keep their existing service, even if they have to pay a surcharge for it, and on that issue the broadcast TV and satellite TV industries remain intractably opposed. The broadcasters argue that local stations will give satellite TV subscribers all the network programming they are entitled to, making the distant stations unnecessary. They also contend that distant network stations rob local stations of their audience and advertising revenues.

The satellite TV industry, on the other hand, believes that its customers should not be arbitrarily deprived of channels they are accustomed to receiving and that enable them to enjoy decent network TV signals and more program options.

Senator Burns and I are cosponsoring S. 303, the Satellite Television Act of 1999. This new legislation would allow satellite TV companies to continue to provide distant network channels for a period of 6 months to subscribers who currently receive them and who reside outside the heart of the local TV station's market.

During this 6 months, the FCC would be required to adopt rules determining whether, and to what extent, satellite TV companies might be allowed to continue offering distant network signals to these subscribers. This determination would be based on the FCC's evaluation of the extent to which continuing this existing service would be likely to materially harm the local broadcaster's ability to serve its local audience.

The bill contains specific safeguards to assure that local broadcasting will not be hurt, and that the FCC act prudently. It would require that the FCC support any decision authorizing continued distant signal service with clear and convincing evidence that local stations would not be materially harmed as a result. The FCC would be further empowered to impose program blackouts on the distant signals if the practicality and feasibility of doing so were also supported by clear and convincing evidence.

Although the bill would not permit illegal signal carriage to continue even on a temporary basis, if the subscriber resides close to the local station, nothing in the bill would affect the right of any subscribers, regardless of where they live, to receive a distant network signal if the local station doesn't provide the subscriber with at least the minimal signal strength the law prescribes, and nothing would prohibit broadcasters from granting as many other waivers as they want to.

Admittedly, this is a compromise, and with all compromises, no one interest is perfectly served, but it would help satellite TV be a more effective competitor to cable by enabling it to carry local stations, and in doing so would mitigate a particularly ill-timed competitive harm. While it would not automatically permit all existing distant network signal carriage to continue, it would allow satellite TV subscribers most likely to need and to want these signals to continue receiving them temporarily.

While it would not allow broadcasters to be the sole arbiters of which satellite TV subscriber shall be allowed to receive distant network signals permanently, it would require an impartial agency, the FCC, to make careful, fact-based decisions where permanent carriage can continue without harming local broadcasters.

In short, while it would not provide perfect answers, it would at least provide understandable answers, yet despite the safeguards, despite the attempts to strike a balanced approach, this bill still has not forged a consensus. In the exact opposite of what happened on last year's legislation, the satellite TV industry supports this bill, and the broadcasters now oppose it.

I will listen carefully one last time to testimony on this issue, but before doing so, I want to give you my perspective on this debate. As much consumer trouble as this problem will cause, it is still not the most important telecom problem consumers face.

For example, it does not match the problems we are going to have to deal with if the average consumer keeps paying higher telecommunications bills without getting more telecom competition or new advanced telecommunications services in return.

It also pales in comparison to other examples of how telecommunications companies hood-winked Congress into thinking that their corporate interests are the same as consumers' interests, like when these same broadcasters successfully persuaded Congress to give them absolutely free an estimated \$70 billion worth of spectrum to use for high definition television.

To the broadcasters who now stand opposed to this legislation, I say this. Your industry is facing an unprecedented challenge. Adopting to a new digital world will offer consumers limitless channels of integrated video, voice, and data service. These channels will give your audience instant access to uncounted new sources of

information and entertainment, and allow them to create and share their own material and ideas directly with everyone else. That, I assure you, constitutes a major issue for your industry.

The one you raise today does not, but in Congress, as in real life, little problems can unexpectedly assume a life of their own. In real life, consumers unfazed by broadcasters' appropriation of \$70 billion in public assets might feel very fazed indeed when those same broadcasters repay the favor by forcing them to give up a valued satellite service. The loss of \$70 billion is hard to understand, but everybody will understand what those blank television screens mean.

As far as Congress goes, as a practical matter we can only respond to valid issues of urgent public importance. Broadcasters insist that cutting off satellite TV subscribers' distant network signals is one of those issues. Suffice it to say, that claim allows room for doubt. For that very reason, broadcasters should perhaps reflect on the extent to which you may be creating room for doubt the next time you raise a clamor about some other issue of urgency, but that is another issue for another day.

I apologize to my colleagues for the long opening statement. As my colleagues on the committee know, we have been through this issue and through this issue and through this issue, and so far we have been unable to get the warring parties to sit down and negotiate meaningfully together. Meanwhile, the consumer of America again is the one who will suffer.

Senator Stevens.

[The prepared statement of Senator McCain follows:]

PREPARED STATEMENT OF HON. JOHN MCCAIN, U.S. SENATOR FROM ARIZONA

Good morning. The Senate Commerce Committee meets today in our latest attempt to solve the major consumer problem that will occur when satellite TV subscribers begin losing their distant network TV stations this Sunday.

I would like to welcome the witnesses who are with us today to help us find a solution to this problem: Andy Fisher, Executive Vice President of Cox Broadcasting, representing the National Association of Broadcasters; Eddy Hartenstein, President of DirecTV, representing the satellite TV industry; and Gene Kimmelman, co-director of the Washington office of Consumers Union, representing that long-suffering and often overlooked constituency, the average consumer.

Before we hear from our witnesses, let me tell you how we got to where we are today.

The blank screens that satellite TV subscribers will begin seeing next Sunday are the culmination of a long and bitter court fight between broadcast TV companies and satellite TV companies that was won by the broadcasters. Despite over six months of intensive Congressional efforts to avert this shutoff, the broadcast and satellite TV industries remain unable to compromise their differences in a way that would serve consumers' interests as much as their own.

After endless months of litigating, lawyering, and lobbying, these industries are still at odds over one question: should satellite TV subscribers be allowed to continue receiving distant network stations when they can also receive local network stations, either off-the-air or as a part of their monthly satellite TV service?

Seems like a reasonably easy question, right? And a reasonable person asked that question would probably answer, "Why not?" Why wouldn't it be reasonable to let satellite TV subscribers keep their distant networks if they want to, even if local stations are also available? Why should satellite TV consumers have no choice in the matter?

The most obvious answer is, unfortunately, also the right one. This is Congress, where telecommunications industry lobbying is no-holds-barred and where no answers are easy—especially when it comes to a showdown between corporate benefit and consumer welfare.

In a sense, this whole mess started because of federal law, which prohibits satellite TV companies from carrying local network stations. It also doesn't let them carry distant network stations unless the customer lives in an area defined as being beyond the reach of satisfactory off-air reception of local TV stations.

This is bad law for several reasons. Satellite TV's inability to carry local stations puts it at an obvious competitive disadvantage to cable TV, which does carry all local signals. This problem is aggravated by the fact that the law has a somewhat unrealistic way of defining when local stations are considered receivable. As a result, satellite TV companies found themselves precluded from providing distant network signals to subscribers who considered the off-air reception of their local stations unsatisfactory. Given this state of affairs, it didn't take long for some satellite TV companies to make a habit of simply providing distant network signals to all their subscribers, even when they weren't eligible to receive them.

And so the satellite TV companies broke the law; the broadcasters sued to enforce the law; and the broadcasters won. The courts ruled they could shut the illegal distant network signals off. After agreeing last year to Congressional requests that they defer these shutoffs until February 28, the broadcasters are now set to begin enforcing their court orders this Sunday.

All the satellite TV companies can do at this point to buy a little more time is to offer the same illegal signals in a different way, thereby removing themselves temporarily from the reach of the court's orders. Although both EchoStar and DirecTV are doing this, it's only likely to postpone the inevitable. All that would be required to reactivate the deletions is for the court to enter a new order, and there's no reason to expect that it won't.

When all is said and done, this litigation shootout is going to claim a lot of innocent victims. First, of course, are the estimated two million satellite TV subscribers who are about to have the plug suddenly pulled on their distant network signals. This is unfortunate, because these people are customers, not accomplices.

The other, less obvious victims are the nation's cable TV subscribers, who continue to endure cable rate increases that outstrip by many multiples the price increases of other consumer goods and services. And that's with federal rate regulation in effect. But cable TV rate regulation ends on March 31—one month after the satellite TV companies have to begin dropping their subscribers' distant network stations.

Unless satellite TV improves its ability to compete effectively with cable TV for the hearts and eyeballs of the multichannel video audience, there will be no competitive check on cable rates to take the place of rate regulation on March 31. Whatever the extent of the damage individual subscribers will incur when they lose their distant network signals, the damage to satellite TV's competitive standing will be even worse. Quite simply, these shutoffs could not occur at a worse time, unless, perhaps, in the middle of the Super Bowl.

This Committee has not just awakened to these problems. Last year I sponsored legislation that would, at long last, have cleared the way for satellite TV companies to carry local TV stations. I am sponsoring the same legislation again this year. The broadcasters and the satellite TV companies both endorse carriage of local signals.

Although this legislation would solve satellite TV's local signal problem, making local signals available still doesn't answer the question of whether satellite TV subscribers ought to be forced to drop their distant network stations in return. An undetermined number of subscribers want to keep their existing service, even if they have to pay a surcharge for it. And on that issue, the broadcast TV and satellite TV industries remain intractably opposed.

The broadcasters argue that local stations will give satellite TV subscribers all the network programming they're entitled to, making the distant stations unnecessary. They also contend that distant network stations rob local stations of their audience and advertising revenues. The satellite TV industry, on the other hand, believes that its customers should not be arbitrarily deprived of channels they are accustomed to receiving and that enable them to enjoy decent network TV signals and more program options.

This isn't the first time we have tried to solve this problem, either. Last year I drafted legislation that would have permitted satellite TV subscribers in a local station's service area to keep receiving distant network signals as long as the satellite TV company compensated the local broadcaster for any lost revenues. The broadcast industry didn't want compensation. As a last resort I sponsored legislation that would have restricted distant network signals to only a small fraction—three percent—of the local station's audience. The broadcasters liked that approach, but the satellite industry didn't. Time finally ran out, and the chance for legislation died.

That brings us to today, and to a different approach to solving this problem that is intended to lead to a reasonable solution for all the parties in

Senator Burns and I are cosponsoring S. 303, the Satellite Television Act of 1999. This new legislation would allow satellite TV companies to continue to provide distant network channels, for a period of six months, to subscribers who currently receive them and who reside outside the heart of the local TV station's market. During this six months the Federal Communications Commission would be required to adopt rules determining whether, and to what extent, satellite TV companies might be allowed to continue offering distant network signals to these subscribers. This determination would be based on the FCC's evaluation of the extent to which continuing this existing service would be likely to materially harm the local broadcaster's ability to serve its local audience.

The bill contains specific safeguards to assure that local broadcasting will not be hurt and that the FCC acts prudently. It would require that the FCC support any decision authorizing continued distant signal service with clear and convincing evidence that local stations would not be materially harmed as a result. The FCC would be further empowered to impose program blackouts on the distant signals, if the practicality and feasibility of doing so were also supported by clear and convincing evidence.

Finally, the legislation would not interfere with any local broadcaster's right to require satellite TV carriers to drop distant network signals that are being illegally provided to subscribers living in the core of the local station's market. In doing this we recognize that some of these satellite TV subscribers might want to retain these signals just as much as subscribers who live farther from the center of the market. However, their nearness to the local stations is a critical difference: unlike people who live farther away from the local stations, these satellite TV subscribers are almost certainly able to view local stations clearly off-air. This in turn tends to make them more local station-oriented, more apt to watch local stations instead of distant stations, and therefore more of a key component of the local station's advertiser support.

Although the bill would not permit illegal signal carriage to continue, even on a temporary basis, if the subscriber resides close to the local station, nothing in the bill would affect the right of any subscribers, regardless of where they live, to receive a distant network signal if the local station doesn't provide the subscriber with at least the minimal signal strength the law prescribes. And nothing would prohibit broadcasters from granting as many other waivers as they want to.

Admittedly, this is a compromise and, as with all compromises, no one interest is perfectly served. But it would help satellite TV be a more effective competitor to cable by enabling it to carry local stations, and in doing so would mitigate a particularly ill-timed competitive harm. While it would not automatically permit all existing distant network signal carriage to continue, it would allow satellite TV subscribers most likely to need, and to want, these signals to continue receiving them temporarily. While it would not allow broadcasters to be the sole arbiters of which satellite TV subscribers shall be allowed to receive distant network signals permanently, it would require an impartial agency, the FCC, to make careful, fact-based decisions on where permanent carriage can continue without harming local broadcasters. In short, while it would not provide perfect answers, it would at least provide understandable answers.

Yet despite the safeguards, despite the attempts to strike a balanced approach, this bill has still not forged a consensus. In the exact opposite of what happened on last year's legislation, the satellite TV industry supports this bill, and the broadcasters oppose it.

I will listen carefully, one last time, to testimony on this issue. But before doing so I want to give you my perspective on this debate.

As much consumer trouble as this problem will cause, it's still not the most important telecom problem consumers face. For example, it doesn't match the problems we're going to have to deal with if the average consumer keeps paying higher telecom bills without getting more telecom competition or new advanced telecommunications services in return. It also pales in comparison to other examples of how telecommunications companies hoodwink Congress into thinking that their corporate interests are the same as consumers' interests—like when these same broadcasters successfully persuaded Congress to give them, absolutely free, an estimated \$70 billion worth of spectrum to use for high-definition TV.

To the broadcasters who now stand opposed to this legislation I would say this. Your industry is facing an unprecedented challenge—adapting to a new digital world that will offer consumers limitless channels of integrated video, voice and data service. These channels will give your audience instant access to uncounted new sources of information and entertainment, and allow them to create and share their own material and ideas directly with everyone else.

That, I assure you, constitutes a major issue for your industry. The one you raise today doesn't.

But in Congress, as in real life, little problems can unexpectedly assume a life of their own. In real life, consumers unfazed by broadcasters' appropriation of \$70 billion in public assets might feel very fazed indeed when those same broadcasters repay the favor by forcing them to give up a valued satellite service. The loss of \$70 billion is hard to understand; but everybody will understand what those blank TV screens mean.

As far as Congress goes, as a practical matter we can only respond to valid issues of urgent public importance. Broadcasters insist that cutting off satellite TV subscribers' distant network signals is one of those issues. Suffice it to say, that claim allows room for doubt. And for that very reason, broadcasters should perhaps reflect on the extent to which you may be creating room for doubt the next time you raise a clamor about some other issue of purported urgency.

But that's another issue, for another day.

STATEMENT OF HON. TED STEVENS, U.S. SENATOR FROM ALASKA

Senator STEVENS. Mr. Chairman, I wish I could stay here for the whole time in this hearing, but I have a Cabinet officer waiting for me in my committee.

Now, this morning I come to say I do believe that these issues, the grade B issue and the local/local issue are very important, and important to the whole country, but I am constrained to say that last year we heard claims that all consumers would have access to local/local, but my staff has reported to me that those who have come to visit with us who are eager to deploy this service have stated that not one of them plans to serve lower than the top 67 markets in the United States.

Echostar, the most prominent potential provider, has committed to only the top 25 markets. Now, I think that this is not competition to cable in rural America, and we would like to find some way to have a viable competitive option for rural and the off-shore States.

I do believe that this concept has merit, and I think you are right, I think it has to be pursued, but the debate on this bill is whether New York City or Los Angeles is going to get local/local, not Anchorage, or Helena, or Eugene, or with due respect, my friend, even Flagstaff.

This is a step toward competition for cable, but we are still trying to figure out how our constituents in rural America and the off-shore States are going to meet the problem that is before the committee, because this bill will not do it.

Now, I do think we are going to have to take another look at the grade B issue. I have not seen the changes that were made yesterday, and so perhaps my comments will be a little bit off the mark, but it seems to me that we should focus in that regard on the unserved people under the law, and whatever process we employ should ensure that the viewing public gets good reception whether it comes from the local broadcaster or the distant signal.

But finally, I am here also, Mr. Chairman, to take a moment to recognize the passing of Terry Mahoney. Terry's sudden death earlier this month shocked us all. His good-natured and effective representation on behalf of NBC will be missed by all of us on this committee, I believe.

Thank you very much.

The CHAIRMAN. Thank you very much, Senator Stevens, and we all share your sentiments concerning Terry Mahoney. Thank you. Senator Rockefeller.

**STATEMENT OF HON. JOHN D. ROCKEFELLER IV,
U.S. SENATOR FROM WEST VIRGINIA**

Senator ROCKEFELLER. Thank you, Mr. Chairman. I tend to like your bill in quite a few ways, and I just want to raise a couple of points and submit my fuller statement for the record.

I think basically with me there is going to be a question of the consumer comes first and everybody else has to get out of the way. That does not really make so much difference to me. I mean, cable is going to be happy on some things, broadcast on some things, direct television on some things, and I do not really care. It is what happens in Montana, West Virginia, Flagstaff, et cetera, that I do care about.

We have things called mountains in West Virginia. That is why we are called the "Mountain State." That means that people sometimes have to go, and if they have to turn off their DTV and go put on their rabbit ears on top of their television set to get cable, that does not make me very happy. I do not think they should have to do that.

I was not pleased by what I read in the Washington Post this morning. I am pleased by what your bill would do to correct that.

I also have to say that I think the whole question of down-beaming and so-called illegal behavior and all the rest of it, that can be changed and made whole by Congress, and I do not want to see—localism is tremendously important to Montana. Localism is tremendously important to West Virginia and Arizona, as it should be. That is people's only connection with the world. That is going to get more and more tenuous as life goes on, and therefore people have an absolute right to be able to get local television, and that is sort of going to be my bottom line on all of this.

Shakespeare would have been more eloquent, but that is what I feel.

[The prepared statement of Senator Rockefeller follows:]

**PREPARED STATEMENT OF HON. JOHN D. ROCKEFELLER IV,
U.S. SENATOR FROM WEST VIRGINIA**

First I'd like to thank Chairman McCain for holding this very important hearing. I am eager to resolve this issue. We need to ensure that those consumers who cannot receive adequate over-the-air network signals have the opportunity to receive such signals from satellite providers. In my State you can live only a couple of miles from a TV station and still receive inadequate TV signals because of the terrain—there is a reason we call it the Mountain State. Let's not punish consumers who live in places like West Virginia.

I am also eager to see satellite providers continue to develop into strong competitors to cable TV providers. Competition, I hope, will drive down prices and lead to improved service.

Communications technology is moving forward on many fronts. As a result, many markets are facing competition from *new technologies*, not only from new competitors. For example, traditional telephone companies now compete with wireless and soon with satellite providers. The Internet provides a new medium for the delivery of telephony, radio, and video services. Importantly for today's purposes, direct-to-home satellite TV providers offer an exciting new service that gives consumers more choice and forces cable providers to improve service in order to compete. We should do what we can to allow this competition to thrive—not stifle it under laws that run counter to good public policy.

There is something wrong with our laws when consumers have to fish out their old rabbit-ear antennas and constantly switch between the satellite service in which they have invested and fuzzy over-the-air signals just to tune in network stations. This should not continue.

I look forward to the day when we have the technology to deliver local stations into local markets. Then people will choose the service that offers the best service at the best price. To get there, we need to develop a transition that rewards technological advancement, remembers that West Virginia's mountains mean inadequate service even close to TV stations, and doesn't punish consumers for trying to get the best TV service offered to them.

I welcome the opportunity to work with Senators McCain and my other colleagues on the Commerce Committee to try to find a solution that puts consumers first.

The CHAIRMAN. Thank you, Senator Rockefeller. Senator Burns.

**STATEMENT OF HON. CONRAD BURNS, U.S. SENATOR
FROM MONTANA**

Senator BURNS. Than you, Mr. Chairman, and thank you for your leadership on this issue, and I am going to submit my statement. I think we should not lose sight of a couple of things. We are talking about in an area strictly a business proposition where you have copyright and you have some infringers, and nobody has to be told of the importance of local-to-local. That was the reason that we had must-carry.

That is the reason must-carry has been looked favorably on by the courts and the cable industry and, of course, now with our direct broadcast folks offering competition to cable, they should fall under that same law as the cables do, because I do not know whether we are kicking the can on the road, or just kicking it clear out of the field, off the road. I am not real sure.

But I am sympathetic to the broadcasters and also to DBS, because their technology just is not there yet where they can conform to the must-carry law of local-to-local, but I think it is very important, and we approach this, and I would hope all parties could come to the table and we could go to providing that technology for local-to-local.

I am disturbed they are only going to go into the top 68 markets, or whatever you announced this morning. I had not read that yet this morning, and that does concern me, because you have got to remember, 258 is in Montana, and 68 to 258 is a long ways.

But I happen to believe that the small television station in Glendive, MT, is very, very important to the people that live in Dawson County and Richland County and over into North Dakota. We have to translate for those folks over there, but we get that done. [Laughter.]

Senator BURNS. Anyway, we will work with all the parties as we kick this can down the road, but keeping in mind that there are some basics we have to look at and no, all parties are not going to be happy. Maybe that means we have got a good bill if nobody's happy about the thing, so I thank you for your leadership, and I want to see this piece of legislation move forward, and that is my primary desire right now.

I will submit my statement, Mr. Chairman.

[The prepared statement of Senator Burns follows:]

PREPARED STATEMENT OF HON. CONRAD BURNS, U.S. SENATOR FROM MONTANA

Mr. Chairman, the subject of today's hearing is crucial to rural states such as Montana. In fact, Montana has the highest penetration level of satellite television in the country at over 31 percent. With over the air broadcast signals and cable delivery limited by the geography of my state, satellite television has been a staple of our so-called "video marketplace" for many years.

The bill we consider today would correct problems that satellite TV customers now face in getting access to network TV programming and would help satellite TV compete with cable. This bill will help provide for greater consumer choice and competition in video services. I was pleased to be an original cosponsor of the bill along with the Chairman and will work with him and the other members of the Committee to ensure passage of this very timely piece of legislation. It is particularly critical that Congress act quickly on this issue, as on February 28, over a million satellite consumers across the country face being cut off from their network signals because of a court decision in Miami.

Congress now has the opportunity to fix some of the problems confronting satellite competitors to cable. We need to set the ground rules that will give the satellite competitors the tools they need to compete on equal footing with cable and the broadcasting industry. This has never been more important than in advance of the impending deregulation of cable.

I have been very concerned that consumers who cannot receive an acceptable quality over the air television signal ought to be able to receive a distant feed of a network signal from satellite. However, the current law does not allow many of these consumers to get a good picture for network signals via satellite.

I would like to explain a little bit about this term "unserved households" by using Montana as an example. The eastern two-thirds of Montana has some tremendous sights. People who are receiving satellite broadcasts can look across the high plains and rolling spaces and not see another farmhouse or a yard light. Unfortunately, these folks are often beyond the reach of our network stations. The western third of Montana is full of mountains and valleys, an environment that poses serious difficulty to consumers wanting to receive off-air network signals. Montana's environment uniquely lends itself to the widespread use of DBS technology.

The bill we have before the Committee today is not a perfect bill, but it represents a very positive step forward in resolving the critical issues before us. I realize that the broadcasting industry has some concerns with the bill, and the recent draft addresses some of their concerns, particularly with regards to the grandfathering clause. I want to state very clearly that my interest is in making sure that only those consumers who cannot receive decent over-the-air signals are able to receive distant network signals.

As a former broadcaster, I recognize the tremendous contributions that local broadcasting makes to our communities, particularly in rural areas. I should note that the legislation before the Committee today specifies that the FCC determine under what circumstances existing distant signal carriage could continue in a given market without harming local stations. Additionally, the bill imposes a rigorous "clear and convincing" burden of proof on the FCC to make sure that local stations aren't harmed. Clearly, the intent of the bill is simply to ensure that satellite consumers have access to network signals where they are unable to receive them off-air.

I remain open to any and all feedback on this bill and I look forward to the testimony of the witnesses. I will work with the Chairman and my colleagues to pass this legislation, which will foster an environment of increased consumer choice and greater competition in the video services marketplace.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator Burns.
Senator Cleland.

STATEMENT OF HON. MAX CLELAND, U.S. SENATOR
FROM GEORGIA

Senator CLELAND. Thank you very much, Mr. Chairman, and ladies and gentlemen, it is nice to be with you today. Let us just say it is an honor and privilege to be with our panelists. Mr. Hartenstein, nice to see you. I can remember when I saw my first satellite dish as a young Army signal officer, and it came to me to death.

Mr. Kimmelman, it is nice to be with you. You do not know it, and not many people in your Consumer's Union organization really know it, but I did my master's thesis some 30 years ago on the origin of the Consumer's Union and the foundation by Arthur Callett, and one of these days we will have to compare notes, so I am a staunch advocate of your organization and what it means to our consumers in the world and in this country.

Andy Fisher, my dear friend from Cox Broadcasting in Atlanta, let me just say that I have a strong bias here. I think of Gore Vidal's great line "that there were two things he never passed up, free love and free TV." I am a lot closer to free TV in Atlanta. So it is good to see you here, Andy.

Let me just say, Mr. Chairman, thank you for the hearing today. I am the newest member of the Commerce Committee, and I appreciate participating in this discussion. Satellite service for years was thought of as something that would only be desired and used for the most rural and remote of television viewers.

Talking about a blank screen, I can remember in my little home town 20 miles out from the WSBN antenna in 1950-51 we were lucky to see the set turn on, and a blank screen was very exciting, but now there are no blank screens that I can find.

I understand that there is a Billy Joel song out there, "500 Channels and Nothing On," so there are blank screens and there are blank screens, but technology marches on. Today we have dishes that are as small as 18 inches. No longer do consumers need a small forest to hide the large C-band dishes.

In Georgia it is often said that our State flower is the satellite dish, so I see many of these as I travel throughout the State, but these new ones can be easily mounted out of sight on a balcony or roof-top, and they receive clear digital broadcast. The sound is perfect. The problem, however, is that the satellite companies do not own the copyright or the rights to transfer the broadcast copyright to households in the areas receiving a clear signal from local broadcasters in the so-called grade A and grade B contours.

Unfortunately, the people who will suffer as a result of this disregard of the law are the consumers; consumers who made a capital investment in a satellite system without having the laws fully explained to them, consumers who were unaware that they would not be able to receive their local broadcasting station, consumers who face termination of service.

For my constituents in Georgia, not receiving local news means a great deal. In Georgia, bad weather has been somewhat of a crisis over the last few years. Weather updates are tremendously important. We have gone through a whole round of upgrading the warning systems in Georgia, particularly for tornadoes, and our local broadcasters are a key part of that.

More importantly, it is vital for our citizens to be aware of what is happening in their communities and what might be coming their way. In all honesty, I do not believe that the answer to this problem is to allow companies who have violated the existing laws to continue these violations, even if only to a handful of the existing homes receiving an illegal signal.

Judge Nesbitt put it this way. PrimeT and its distributors have made large profits by ignoring the legal standard that governs

their businesses, and have spent minimal amounts on compliance. I do not believe that this will improve if this behavior is allowed to continue.

However, all of us are aware that cable rate regulations expire on March 31. Without a viable competitor to cable, consumers maybe the losers again. Therefore, I believe that Congress must act to allow satellite carriers to compete on a level playing field with cable service providers, and I look forward to working with my colleagues on the Committee to remove the barriers to satellite re-broadcasting of local affiliates.

I applaud you, Mr. Chairman, for underscoring the importance of community broadcasters by including a must-carry provision, in and of local signals for satellite carriers, in S. 303. While there are obviously some differences of opinion on the Committee and on the details of responsible satellite television legislation, by working together, I think we might be able to craft legislation that will create a win-win for consumers in my State and in the country.

Thank you, Mr. Chairman.

[The prepared statement of Senator Cleland follows:]

PREPARED STATEMENT OF HON. MAX CLELAND, U.S. SENATOR FROM GEORGIA

Mr. Chairman, I would like to take this opportunity to applaud the scores of people who have been involved in the efforts to work out a compromise on this issue. I know that each side came to the table with very distinct and different positions, and I was pleased yesterday when I was informed that the Ranking Member, Senator Hollings, and Senators Stevens and Kerry had framed language which would address many of the important issues in the distant broadcast signal debate. In fact, I decided to sign on as a co-sponsor of this amendment.

The Hollings, Stevens, Kerry, Cleland amendment will allow satellite consumers continuation of service during a grace period. Under this language, consumers in the Grade A contour continue to receive their satellite signal for 120 days after enactment of this bill, and households located in the Grade B contour would continue to receive their service until the end of the year. During this time, the FCC will be charged with the responsibility of adopting regulations governing waiver procedures, so that the burden is not on consumers. Simply put, once the illegal signals are terminated, the waiver procedure for those who truly cannot receive a viewable signal according to the Longley-Rice test will be simplified and streamlined. I support these efforts to make the waiver process more consumer friendly.

In my opinion, the satellite consumers, our constituents, are the ones who have lost out during this entire process. These consumers have made the capital investment in order to receive this service, not knowing that, in some cases, it would be illegal to transmit distant broadcast signals into their homes. Now, this satellite system, which many of my constituents have told me they purchased to improve the picture they receive when watching network programming, is unable to provide them the service they initially desired. I have heard that consumers who sign up for service currently are receiving antennas as part of their satellite package. However, will this same option be extended to the unknowing consumers who purchased these systems previously and may only need an antenna to receive a local signal clearly? These are the consumers who are truly caught in the middle of this debate.

We have the opportunity today to come to the aid of these consumers who have been caught in the middle and promote localism at the same time. I urge my committee colleagues to support the Hollings, Stevens, Kerry, Cleland amendment that will offer a continuation of service for a period of time during which the waiver process is made easier.

Our goal is not to deny these citizens the right to watch television but to implement a policy that has true deadlines and objectives, while empowering consumers with information to ensure that they are not caught in the middle again.

The CHAIRMAN. Thank you, Senator Cleland.
Senator Wyden.

**STATEMENT OF HON. RON WYDEN, U.S. SENATOR
FROM OREGON**

Senator WYDEN. Thank you, Mr. Chairman. I look forward to working with you on this issue.

This seems to me, Mr. Chairman and colleagues, to be another area where the big guys of communications have found gold in the populated urban areas. There is plenty of evidence that the folks in rural communities are about to be strip-mined again, and what is especially troubling to this Senator is that these large communication firms do not want to serve the rural communities. In addition, under the status quo, the small cable system and the small broadcasters are going to find it very hard to serve rural communities.

So I am interested in working with you, Mr. Chairman and Senator Burns, and my test is going to be to make sure that we can come up with some policies, for example, that are going to allow a small cable system like we have in Oregon, that serves 13,000 Oregon households in Sheraton, Halsey, Monroe, Woodburn and a variety of our small rural communities. I want to make sure that those kinds of systems are going to be able to exist in the 21st Century, and I look forward to working with you and Senator Burns toward that end.

The CHAIRMAN. Thank you, Senator Wyden.
Senator Dorgan.

**STATEMENT OF HON. BYRON L. DORGAN, U.S. SENATOR
FROM NORTH DAKOTA**

Senator DORGAN. Mr. Chairman, I will put a statement in the record, but let me thank you for holding this hearing, and the leadership you have exhibited. I would mirror many of the comments offered by my colleagues, but let me put a statement in the record so we can hear the witnesses.

[The prepared statement of Senator Dorgan not available at time of printing.]

The CHAIRMAN. Thank you.
Senator Kerry.

**STATEMENT OF HON. JOHN F. KERRY, U.S. SENATOR
FROM MASSACHUSETTS**

Senator KERRY. Mr. Chairman, just a couple of quick comments, then I would like to also put a statement in the record. Thank you for pursuing this, both you and Senator Burns. It has been a difficult subject for us to address, and hard to reach consensus and find a solution, and I think we have come as far as we have thanks to your persistent efforts on it, and we thank you for that.

Obviously, we need to provide satellite providers the ability to provide and offer local network signals, and it is also obvious we need to do that pretty quickly. However, we have to act fairly, and we need to carefully consider the legitimate interest of all the parties involved; satellite, the local broadcasters and, obviously, the consumer interests.

I think all of us are thrilled with the success and with the potential for competition that companies like Echostar and DIRECTV offer, but at the same time, we have got to recognize that local

broadcasters offer a very special set of services that we are all, I think, attuned to and sensitive about.

The goal here ought to be to even the playing field by permitting DBS providers to offer local network signals at the same time as we have a regulatory structure that is fair and evenhanded. Most importantly, we need to promote competition, greater choice, and lower prices. I think that these are the guiding principles that certainly bring me to the table here.

I think we also have to find a way to express our concern about not setting a dangerous precedent of rewarding flagrantly illegal behavior. I am not going to second-guess the Federal judge who unambiguously said that the satellite industry made a conscious decision to flout the law when it was aware of what the law required.

I am disturbed that companies would violate the law in such a manner and then argue that we ought to just turn the other cheek and promote the greater good without regard to that. I think there is a question here of equity, and of common sense that we need to find a way to balance as we approach this. Mr. Chairman, I am sure under your leadership we are going to do that, and I hope obviously we can do that very quickly because of the loss that may occur to people as a consequence of our inaction.

Thank you very much.

[The prepared statement of Senator Kerry follows:]

PREPARED STATEMENT OF HON. JOHN F. KERRY, U.S. SENATOR FROM
MASSACHUSETTS

Good morning. I'd like to thank the Chairman for introducing his bill and for calling this hearing. As we all know, this has been a very difficult subject to address and even more difficult to reach consensus and find a solution. We have come as far as we have thanks to the consistent and courageous leadership of our Chairman, and we will ultimately succeed, in large part, because of his efforts.

We need to provide satellite providers the ability to offer local network signals, and, and we need to do so quickly. We owe that much to our constituents. However, we also need to act fairly, and we need to make sure that we carefully consider the legitimate interests of all the parties involved—the satellite companies, the local broadcasters, and most all, America's consumers.

Personally, I'm thrilled with success of companies like Echostar and Direct TV. The direct broadcast satellite (DBS) industry has been able to harness new technologies and put them to work for the benefit of the American public. They are our best hope of providing consumers with real competition and greater choices in the market for video services, and we owe it to them and to America's consumers to do everything we can to level the playing field between cable and satellite providers.

At the same time, we should never overlook the important and historic role of America's local broadcasters. It is local broadcast stations that are most attuned to the needs of individual communities. Whether it's through emergency weather reports, local news bulletins, local candidate's debates, or the myriad of community events that they sponsor, we should not minimize the contribution of local broadcast stations to our communities. For this reason, we must be careful not to take action that might cause real financial harm to our local broadcast stations.

I'm concerned about my constituents in Massachusetts losing network service. Unless we act quickly, events may cause these constituents to lose valuable television service that they have come to rightfully expect through no fault of their own.

However, I'm equally if not more concerned that we not set a dangerous precedent of rewarding flagrant illegal behavior. I'm not about to second guess the federal judge who unambiguously stated that the satellite industry "made a conscious decision to flout the law when it was aware of what the law required." I'm also somewhat disturbed that companies would violate the law in such a manner and then argue that we must turn the other cheek in order to promote the greater good.

Mr. Chairman, as you know, I had certain concerns with the bill that you introduced, in particular, the extent of the grandfather provision and the material harm

standard. However, I am very pleased with the response of you and your staff and your willingness to work me to address these concerns.

In the end, I am confident that we can pass legislation that (1) evens the playing field by permitting DBS providers to offer local network signals, (2) establishes a regulatory framework that is fair and evenhanded, and (3) most importantly, promotes competition, greater choice and lower prices in the market for video services.

The CHAIRMAN. Thank you very much, Senator Kerry. I want to welcome the witnesses before the Committee today. We will begin with you, Mr. Fisher. Welcome.

STATEMENT OF ANDREW J. FISHER, EXECUTIVE VICE PRESIDENT, TELEVISION AFFILIATES, COX BROADCASTING COMPANY

Mr. FISHER. Thank you, sir.

Mr. Chairman and distinguished members of this committee, I am here today on behalf of the National Association of Broadcasters, where I am a member of the television board as well as local network affiliates. I want to thank the chairman and the distinguished members of this committee for another opportunity to speak to you.

When I was before this panel in October I made two straightforward points, and I will attempt to do so again today. My first point is this. Congress should not be in the business of rewarding industries that wilfully and repeatedly violate the law. I am speaking, of course, of the satellite industry and in particular prime time 24 and its distributors, such as DIRECTV. The Satellite Home Viewer Act was very clear about which satellite customers were eligible for distant network services. Primetime 24 and its distributors such as DIRECTV knew those requisites, and they simply ignored them.

Judge Lenore Nesbitt, the Federal judge in Miami who heard broadcasters and their case against Primetime 24, put it best, "Primetime made a conscious decision to flout the law when it was well aware of what the law required. Primetime does not restrict its sale of network programming to locations that local stations have stated are unserved. In fact, Primetime places no geographical limits on its sale of CBS or Fox programming."

As a result of this indiscriminate marketing, the vast majority of those satellite subscribers who signed up for distant network service are, in fact, ineligible to receive it. Many of these subscribers are located in the area between the grade A and grade B contours.

Mr. Chairman, Judge Nesbitt was also right to conclude that "a company cannot build a business on infringements and then argue that enforcing the law will cripple that business," but this is exactly what the satellite industry is arguing before you and your colleagues today. A decision to grandfather customers that they obtained by violating Federal law will merely reward them for breaking that law.

The satellite industry is itself now experiencing a direct parallel to this situation. Last week, as memorialized in a press release from DIRECTV, a Federal grand jury in Washington State indicted four individuals for selling counterfeit access cards. These can be used to illegally receive DIRECTV and U.S. satellite broadcasting programming free of charge.

DIRECTV wasted no time in firing off this release commending the U.S. Attorney's Office for seeking this indictment. Consumers who bought those counterfeit cards are going to lose a service they have come to enjoy, but do they have any more right to DIRECTV's signal than the millions of people Primetime 24 illegally signed up to receive distant network service? Of course not.

To grandfather these illegally obtained distant network customers makes no more sense than allowing these people who purchased counterfeit access cards to go on receiving DIRECTV for free. Such an idea is not only contradictory to common sense, it is also a threat to localism.

Local stations would make less revenue in a smaller market. Less revenue would mean less money for important local programming such as news, community affairs, and public safety. The serious implications for our local broadcast system are obvious. It is local broadcast stations, not national satellite networks, which communicate with local communities. It is local stations that issue emergency weather reports and local news bulletins. It is local stations that host candidate debates and provide other critical information about campaigns for public office.

Now, we have heard a lot of talk about the need to provide some relief for the satellite customers involved in this controversy, but I believe there is a far larger universe of consumers, the millions of Americans who do not own satellite dishes and they rely on free, over-the-air television, and they will be the losers if you make an exception for these few.

The second point I would like to make to you is that the issue here is not whether your constituents with satellite dishes can watch programming from the Big Four broadcast networks. The only question is, what is the proper source of that programming? The Satellite Home Viewer Act makes it very clear that local broadcast stations are the proper source, except in the instances where people cannot receive the signals of their local affiliates, and I will submit to you that in the majority of the illegal satellite subscribers they simply are not in this limited group.

Your constituents will *not* lose access to network programming in most cases for satellite subscribers covered by the February 28 termination order. The only thing preventing their reception of network programming from free, over-the-air network affiliates, is simply the lack of a properly installed antenna. It is ironic to me that the two big DBS operators, DIRECTV and USSB, earlier this year signed comarketing deals with big regional phone companies, including Bell Atlantic and GTE Corporation, and the phone companies have started offering turnkey satellite services, including powerful new antennae that are capable of tapping local TV channels with a mere zap of a remote control.

If such a solution is good enough for the satellite companies' new customers, then why is that not the solution for the customers to whom they sold satellite service under the false pretense that they had a legal right to distant network signals?

Rather than asking you to sanction their illegal behavior after the fact, the satellite industry should engage in some good old customer relations. They should offer to reimburse each of these customers for the cost of purchasing and installing one of these power-

ful new antennae as compensation for the inconvenience they have caused. After all, the \$75 cost of such a gesture pales in comparison to the over one-half billion dollars they earned by selling the service illegally.

Mr. Chairman, I believe that the proper use of conventional antennae, coupled with your authorization of local-to-local service, is the solution for this problem, not rewarding illegal business behavior. The need for TV antennae is no threat to the competitive ability of the satellite industry, as they would have you believe.

In fact, since Judge Nesbitt issued the permanent injunction preventing the satellite industry from signing up new, illegal subscribers, and since DIRECTV began to offer the antenna option, the satellite industry has set new sales records every month.

Now, Mr. Hartenstein and I are in full agreement that the new FCC system, their recommendation for determining the eligibility for distant signals is a good one. DIRECTV has proven that this system works, and its own marketing materials underscore that satellite service and an antenna is an unbeatable solution.

Broadcasters are processing thousands of waivers. Most consumers truly understand that in the end they will not lose access to network programming. This process provides consumers with a positive solution to the problem that they were not responsible for creating, and all we hope is that you will let this system work.

Thank you, Mr. Chairman. I will be happy to answer any questions.

[The prepared statement of Mr. Fisher follows:]

PREPARED STATEMENT OF ANDREW S. FISHER, EXECUTIVE VICE PRESIDENT,
TELEVISION AFFILIATES, COX BROADCASTING COMPANY

Mr. Chairman and distinguished members of this Committee, I am here today on behalf of the National Association of Broadcasters, where I am a member of the television board, and local network affiliates.

I want to thank the chairman and the distinguished members of this Committee for another opportunity to speak to you. When I was before this panel in October, I made two straightforward points, and I will do so again today.

My first point is this: Congress should not be in the business of rewarding industries that willfully and repeatedly violate the law. I am speaking of course of the satellite industry, and in particular, PrimeTime 24 and its distributors, such as DirecTV. The Satellite Home Viewer Act was very clear about which satellite customers were eligible for distant network service. PrimeTime 24, and its distributors, such as DirecTV knew those prerequisites, and simply ignored them.

Judge Lenore Nesbitt, the federal judge in Miami who heard broadcasters' case against PrimeTime 24, put it best, and I quote: "PrimeTime made a conscious decision to flout the law when it was well aware of what the law required. PrimeTime does not restrict its sale of network programming to locations that local stations have stated are unserved. In fact, PrimeTime places no geographical limits on its sale of CBS or Fox programming," end quote.

As a result of this indiscriminate marketing, the vast majority of those satellite subscribers who signed up for distant network service are ineligible to receive it. Many of these subscribers are located in the area between the Grade A and Grade B contours.

Mr. Chairman, Judge Nesbitt was also right to conclude that quote, "a company cannot build a business on infringements and then argue that enforcing the law will cripple that business."

But this is exactly what the satellite industry is arguing before you and your colleagues today. A decision to grandfather customers that they obtained by violating federal law will merely reward them for breaking the law.

The satellite industry is itself now experiencing a direct parallel to this situation. Last week, a federal grand jury in Washington State indicted four individuals for selling counterfeit access cards, which can be used to illegally receive DirecTV and United States Satellite Broadcasting programming free of charge. DirecTV wasted

no time in firing off a news release commending the U.S. Attorney's office for seeking this indictment. Consumers who bought those counterfeit cards are going to lose a service they've come to enjoy, but do they have any more right to DirectTV's signal than the millions of people PrimeTime 24 illegally signed up to receive distant network service?

Of course not. To grandfather these illegally obtained distant network customers makes no more sense than allowing people who purchased counterfeit access cards to go on receiving DirectTV for free.

Such an idea is not only contradictory to common sense, it is also a threat to localism. Local stations would make less revenue in a smaller market. Less revenue would mean less money for important local programming such as news, community affairs and public safety.

The serious implications for our local broadcast system are obvious. It is local broadcast stations, not national satellite networks, which communicate with local communities. It is local stations that issue emergency weather reports and local news bulletins. It is local stations that host candidate debates and provide other critical information about campaigns for public office.

We have heard much talk about the need to provide some relief for the satellite customers involved in this controversy. But I believe there is a far larger universe of consumers—the millions of Americans who do not own satellite dishes, and rely on free, over-the-air television—who will be the losers if you make an exception for these few.

The second point I want to make to you is that the issue here is not whether your constituents with satellite dishes can watch programming from the Big Four broadcast networks. The issue is: what is the proper source of that programming? The Satellite Home Viewer Act makes it clear that local broadcast affiliates are the proper source, except in the instances where people cannot receive the signals of their local affiliates. I would submit to you that the majority of the illegal satellite subscribers are not in this limited group.

Your constituents are not losing access to network programming. In most cases, for satellite subscribers covered by the Feb. 28 termination order, the only thing preventing their reception of network programming from free, over-the-air network affiliates is the lack of a properly installed antenna.

It is ironic to me that two big DBS operators, DirecTV and USSB earlier this year signed co-marketing deals with big regional phone companies, including Bell Atlantic Corp. and GTE Corp. The phone companies have started offering turn-key satellite services, including powerful new antennae capable of tapping local TV channels with the mere zap of a remote control. If such a solution is good enough for the satellite companies' new customers, why isn't it the solution for the customers to whom they sold satellite service under the false pretense that they had a legal right to distant network signals?

Rather than asking you to sanction their illegal behavior after the fact, the satellite industry should engage in some good old-fashioned customer relations. They should offer to reimburse each of these customers for the cost of purchasing and installing one of these powerful new antennae as compensation for the inconvenience they have caused. After all, the \$75 cost of such a gesture pales in comparison to the \$557 million they earned by selling this service illegally.

Mr. Chairman, I believe the proper use of conventional antennae, coupled with your authorization of local-to-local service, is the solution to this problem, not rewarding illegal business behavior.

The need for a TV antenna is no threat to the competitive ability of the satellite industry, as they would have you believe. In fact, since Judge Nesbitt issued the permanent injunction preventing the satellite industry from signing up new illegal subscribers and DirectTV began to offer the antenna option, the satellite industry has set new sales records each month.

Mr. Hartenstein and I are in full agreement that the new FCC system for determining eligibility for distant signals is a good one. DirecTV has proven that this system works, and its own marketing materials underscore that satellite service and an antenna is an unbeatable solution. Broadcasters are processing thousands of waivers, and most consumers understand that in the end, they will NOT lose access to network programming. This process provides consumers with a positive solution to the problem that they were not responsible for creating. All we are asking is that you let this system work.

Thank you and I'll be happy to answer any questions.

The CHAIRMAN. Thank you very much, Mr. Fisher.
Mr. Hartenstein.

STATEMENT OF EDDY HARTENSTEIN, PRESIDENT, DIRECTV

Mr. HARTENSTEIN. I want to thank you, Mr. Chairman and Senator Burns, for introducing S. 303, the Satellite Television Act of 1999. We would encourage your colleagues to cosponsor the bill, as some of you already have this morning. We thank all of you.

The issues we are discussing this morning are of extreme importance to more than 10 million Americans who subscribe to satellite television, and I appreciate the opportunity to share our views.

Much controversy has surrounded the Satellite Home Viewer Act's white area restriction on the delivery of distant network signals. At the outset, it is important to note that consumers would prefer in almost all cases to receive their local news, their local sports, their local weather, as provided by their local network affiliates. However, there will always be consumers who cannot receive a clear picture using an off-air antenna, and who must rely on the ability to receive distant network signals in order to access this critical segment of programming, i.e., the networks.

While DIRECTV is sensitive to the concern of local network affiliates that led initially to the enactment of the white area restriction, it has become increasingly clear that the current statutory solution to protecting the local broadcasters' interests has resulted in significant frustration and confusion for satellite carriers and local network affiliates.

The losers, unfortunately, have been satellite consumers. It is difficult, under any circumstance, to explain to consumers why they should not be able to get the programming for which they are willing to pay. When that denial of programming is based on the false assumption that clear off-air signals are available, confusion turns to frustration, and frustration turns to anger.

I know all of you have been hearing from many of these frustrated consumers. Many of us had hoped that the FCC's recent rulemaking proceeding would substantially resolve the white area problems. Ultimately, the FCC determined that it does not have sufficient authority under the Satellite Home Viewer Act to provide the type of procompetitive, proconsumer solution this critical issue requires. Therefore, as the FCC itself indicated, it is up to Congress to amend the Act to create a fair and simple pro-consumer approach to this issue.

First, Congress should direct the FCC to set a signal reception standard solely for the Satellite Home Viewer Act that will ensure that households that cannot receive a clear over-the-air network signal using a conventional roof-top antenna can receive distant network signals via satellite.

The FCC admitted that the existing grade B signal intensity standard was set for a completely different purpose way back in the 1950's and was not intended to achieve this objective, but stated that it lacked the statutory authority to create an appropriate standard.

We need a signal intensity standard specifically designed to identify households that cannot receive a clear picture on the television set in their living room or their bedroom. The standard should be based on what consumers in 1999 expect of their television picture, and should take into account such factors as ghosting, technically

known as multipathing, signal interference, environmental noise, and line loss due to in-home splitters.

Second, Congress should direct the FCC to establish a point-to-point predictive model that will enable consumers to know with a high degree of certainty whether they will be able to receive a clear local network signal using a conventional rooftop antenna.

It will never be realistic to expect satellite carriers or others to spend \$150 or more to take a signal-intensity measurement at the household of every subscriber who wishes to pay a few dollars a month to receive distant network signals. The economics simply do not work.

Therefore, satellite carriers must be able to rely on predictive models, and for consumers to similarly rely on the results of a predictive model, the results must be given presumptive legal effect. To have that effect, the burden and cost of any challenge should be borne by the party challenging the presumption.

Third, the group of consumers who were receiving distant network signals via satellite at the time of the Miami court ruling should not be penalized. S. 303 would protect current subscribers' rights to receive distant network signals via satellite unless it could cause "a projected loss of audience and revenue of such a magnitude as to cause material harm to the viability of local stations."

Since the number of subscribers we are talking about constitutes no more than 1 percent of the households in most markets, clearly retention of service by these subscribers would have a negligible financial impact on the network affiliates.

Mr. Chairman, as you indicated in a letter you sent to your Senate colleagues last week, and if I may quote, "The last thing the public interest needs is to have cable TV's biggest competitive threat dealt a consumer service setback of this magnitude."

Your observation is absolutely correct. Even before large numbers of subscribers have seen their distant network service terminated, we are seeing considerable marketplace confusion and disruption. We believe the right approach for both consumers and for competition is to allow current subscribers to retain service while ascertaining whether permitting them to do so will cause any material harm. In addition to serving the interests of consumers, this approach will also alleviate significant customer service and public relations problems for local broadcast affiliates and the satellite carriers alike.

Finally, some have suggested that if Congress passes local into local legislation, the white area problem will vanish. This simply is not so. Satellite-delivered local signals at best will be available only in a limited number of television markets, those with the very largest number of households, and this is due to channel capacity limitations that we have through satellite as a national service provider.

As a result, the ability to deliver distant network services and signals to households that cannot receive over-the-air network signals will continue to be essential. I agree with Andy the best solution, and we have always said that ultimately, as broadcasters go digital, is to incorporate a set-top box that receives analog today and digital signals tomorrow, and we have indeed reserved chan-

nels 1 through 99 for just that. What we are talking about here are the folks that currently are getting their distant network signals.

Let me conclude by saying that DIRECTV remains committed to working and trying to work with the broadcast community and Congress to quickly find an appropriate and, we hope, pro-consumer resolution to the white area issue. We remain hopeful that such a solution can be implemented in time to mitigate the current confusion and disruption in the market and to avert the anticonsumer and anticompetitive implications that will result from the pending loss of service to satellite TV subscribers.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Hartenstein follows:]

PREPARED STATEMENT OF EDDY HARTENSTEIN, PRESIDENT, DIRECTV

I want to thank you, Mr. Chairman, for introducing S. 303, the Satellite Television Act of 1999. I also want to thank Senator Burns, Chairman of the Subcommittee on Communications, for joining you in introducing that bill. We would urge your colleagues to cosponsor the bill.

The issues we are discussing this morning are of extreme importance to the more than 10 million Americans who subscribe to satellite TV and I appreciate the opportunity to share our views.

DIRECTV® launched its service about 4½ years ago. From day one, we have been dedicated to providing consumers with a compelling multichannel video alternative to incumbent cable television operators. DIRECTV today remains dedicated to that same goal.

DIRECTV has experienced strong growth since its inception, and is the leading provider of direct broadcast satellite ("DBS") service in the United States with more than 4.6 million subscribers. Today, 1 in every 22 households in the United States has DIRECTV.

The Federal Communications Commission ("FCC") recently determined that DBS represents "the single largest competitor to cable operators."¹ Yet, as the FCC reported, 85% of the households subscribing to multichannel video receive service from their local franchised cable operator.² We are targeting every one of those cable subscribers to convince them that DIRECTV offers a superior product at a competitive price.

Unfortunately, our efforts to compete aggressively with cable, and to provide the kind of competition that Congress wants us to provide, are being hampered by a number of regulatory and statutory obstacles. Several of those obstacles are found in the law we're discussing today, the Satellite Home Viewer Act.

Much controversy has surrounded the Satellite Home Viewer Act's "white area" restriction on the delivery of distant network signals. At the outset, it is important to note that consumers would prefer to receive their local news, sports and weather, as provided by their local network affiliate. Thus, DIRECTV strongly believes that the winning combination for consumers, network affiliates and DBS providers is the free receipt of off-air signals via the use of conventional rooftop antennas. Stated simply, DIRECTV's long-term objective is to re-populate American homes with rooftop antennas and re-introduce consumers to one of the last truly free, high-quality entertainment opportunities. This fundamental philosophy is reflected in the design of DIRECTV's receiving equipment, which facilitates the seamless integration of off-air broadcast signals—analogue signals today, and digital signals in the future as broadcasters convert to digital. In addition, several manufacturers offer dishes with embedded broadcast antennas.

Regardless of DIRECTV's success in promoting the off-air solution, there will remain some limited number of consumers that cannot receive a clear picture using an off-air antenna and who must rely upon the ability to receive a distant network signal in order to access this critical segment of programming. DIRECTV is sensitive to the concerns of local network affiliates that led initially to the enactment of the "white area" restriction, i.e., a desire to preserve the exclusivity of their programming within local markets so as to maintain their ratings, and in turn, their advertising rates. It has become increasingly clear, however, that the current statu-

¹Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming, CS Dkt. No. 98-102, Fifth Annual Report, ¶62 (rel. Dec. 23, 1998).

²Id. Appendix C, Table C-1.

tory solution to protecting the local broadcasters' interests has resulted in significant frustration and confusion for satellite carriers and local network affiliates. The loser, unfortunately, has been satellite consumers. It is difficult under any circumstance to explain to consumers why they should not be able to get programming for which they are willing to pay. When that denial of programming is based on the false assumption that clear off-air signals are available, confusion turns to frustration and anger. I know all of you have been hearing from many of these frustrated consumers.

We believe that the only way to resolve the white area concerns, and to put this matter behind us, is for Congress to amend the Satellite Home Viewer Act so as to modify the white area restriction. And while there may be a reasonable debate about the extent and nature of the modification required, we would urge Congress in considering this important issue to be guided by three overriding objectives.

First, to perhaps state the obvious, the law must be fair—that is, it must strike a reasonable balance between the legitimate economic interests of satellite carriers and network affiliates. Second, it must be simplified—subscriber eligibility to receive network programming must be both easily understood by consumers and easily applied and monitored by satellite carriers and broadcasters. Third, and most importantly, it must be pro-consumer—the law must recognize the right of all consumers to receive network programming, ideally as delivered over-the-air by their local network affiliate, but if that is not an option, then through a satellite-delivered distant network signal. That was clearly Congress' intent when the Satellite Home Viewer Act was first enacted in 1988.

Many of us had hoped that the FCC's recent rulemaking proceeding would substantially resolve the white area problems. Unfortunately, in spite of the FCC's well-intentioned efforts, the Order it adopted does not resolve these issues. Ultimately, the FCC determined that it does not have sufficient authority under the Satellite Home Viewer Act to provide the type of pro-competitive, pro-consumer solution this critical issue requires. Therefore, as the FCC itself indicated, it's up to Congress to amend the Satellite Home Viewer Act so as to create a fair, simple and pro-consumer approach to this issue.

First, Congress should direct the FCC to set a signal reception standard solely for the Satellite Home Viewer Act that will ensure that households that cannot receive a clear over-the-air network signal using a conventional rooftop antenna can receive distant network signals via satellite. The FCC, in its Order, admitted that the existing Grade B signal intensity standard was never intended to be used to evaluate the quality of the television picture received by an individual household. Rather the current standard was established in the 1950s for what the FCC called "the very different and difficult problem"³ of creating station service areas and determining the proper allocation of channels in the early days of television. In other words, the standard was designed to prevent the signal of one station from interfering with the signal of an adjacent station, *not* to determine picture quality at a consumer's home.

We need a signal intensity standard specifically designed to identify households that cannot receive a clear picture on the television set in their living room or their bedroom. That standard should relate to what consumers in 1999 expect of their television picture and should take into account such factors as ghosting (also known as multipathing), signal interference, environmental noise, and line loss due to the use of splitters. The FCC concedes that a better standard could be developed for identifying unserved households. Sufficient engineering expertise, both at the FCC and in industry, exists to develop such a standard. All that is required is a clear directive from Congress.

Second, Congress should direct the FCC to establish a point-to-point predictive model that will enable a consumer to know with a high degree of certainty whether or not he or she will be able to receive a clear local network signal over-the-air using a conventional rooftop antenna. It will never be realistic to expect satellite carriers to spend \$150 or more to take a signal intensity measurement at the household of every subscriber who wishes to pay a few dollars a month to receive distant network signals. The economics simply don't work. Therefore, satellite carriers must be able to rely on models that predict the strength of local signals at an individual household.

For consumers similarly to rely on the results of a predictive model, however, the results must be given presumptive legal effect. To have that effect, the burden and cost of any challenge should be borne by the party challenging the presumption. Unless these changes are made in the law, we will continue to see large numbers of

³In the *Matter of Satellite Delivery of Network Signals to Unserved Households for Purposes of the Satellite Home Viewer Act, Part 73 Definition and Measurement of Signals of Grade B Intensity*, CS Dkt. No. 98-201, Report and Order, ¶33 (rel. Feb. 2, 1999).

subscribers' eligibility randomly challenged by broadcasters, leaving the satellite carrier with no practical recourse other than to terminate service. We need to create a situation where broadcasters, satellite carriers, and, most importantly, consumers agree that the predictions are accurate and should be accepted as a final determination of eligibility.

Third, the group of consumers who were receiving distant network signals via satellite at the time of the Miami court ruling⁴ should not be penalized. The bill introduced by Senators McCain and Burns would protect current subscribers' right to receive distant network signals via satellite unless it would cause "projected loss of audience and revenue of such a magnitude as to cause material harm to the viability of local stations." Since the number of subscribers we are talking about constitutes no more than one percent of the households in most markets, clearly retention of service by these subscribers would have a negligible financial impact on the network affiliates.

Mr. Chairman, I hope you won't mind if I quote from the letter you sent to your Senate colleagues last week:

This problem [] occurs at an unfortunate time in terms of furthering multi-channel video competition. Satellite TV service has begun to emerge as the best competitor to monopoly cable television service. . . . The last thing the public interest needs is to have cable TV's biggest competitive threat dealt a customer service setback of this magnitude.

Mr. Chairman, you are absolutely correct. Even before large numbers of subscribers have seen their distant network service terminated, we are seeing considerable marketplace confusion and disruption. We believe the right approach, both for consumers and for competition, is to allow current subscribers to retain service while ascertaining whether permitting them to do so will cause any material harm. In addition to serving the interests of consumers, this approach also will alleviate significant customer service and public relations problems for local broadcast affiliates and satellite carriers alike.

I believe the white area approach I have outlined addresses each of the three objectives I listed at the beginning of this discussion—fairness, simplicity and assured access to network programming.

Let me turn briefly to other Satellite Home Viewer Act matters.

We are pleased to see in Senator Hatch's bill, S. 247, the elimination of the provision requiring a cable subscriber to drop his or her cable subscription and wait 90 days before he or she can subscribe to distant network signals. This aspect of the "unserved household" definition has no rational basis, is anticompetitive, and merely delays service to consumers. The elimination of this provision will have a positive impact on the marketing of DBS service.

Mr. Chairman, you, along with Senators Burns and Dorgan, led the fight to reverse the Copyright Office's decision to impose on satellite carriers copyright fees for the retransmission of superstations and distant network signals that currently are as much as ten times those paid by cable operators. We are pleased to see a reduction in those rates included in Senator Hatch's bill. While even at these proposed reduced rates satellite carriers still would be paying significantly more than cable operators, we view this as a good faith effort to bring satellite's rates more in line with those paid by cable operators. We certainly hope that the copyright owners will accept the rates proposed by Senator Hatch.

Finally, much has been said about satellite carriers' ability to provide "local into local." Some have suggested that if Congress passes legislation permitting satellite carriers to retransmit local broadcast channels within the local market the white area problem will vanish. This simply is not so. Even if Congress passes the necessary legislation, satellite-delivered local signals at best will be available only in a limited number of television markets—those with the very largest number of households—due to channel capacity limitations. And the number of cities that could be served by satellite would be reduced even further by the imposition of full must carry. As a result, the ability to deliver distant network signals to households that cannot receive over-the-air network signals will continue to be essential.

Let me conclude by saying that DIRECTV remains committed to working with the broadcast community and Congress to find quickly an appropriate pro-consumer resolution of the white area issue. We remain hopeful that such a solution can be implemented in time to mitigate the current confusion and disruption in the market, and to avert the anti-consumer and anti-competitive implications that will result from the pending loss of service to satellite TV subscribers.

Thank you.

⁴*CBS Broadcasting Inc. v. PrimeTime 24 Joint Venture*, No. 96-3650-CIV-NESBITT (S.D. Fla.).

The CHAIRMAN. Thank you, sir.
Mr. Kimmelman.

**STATEMENT OF GENE KIMMELMAN, CO-DIRECTOR,
CONSUMERS UNION**

Mr. KIMMELMAN. Thank you, Mr. Chairman. On behalf of Consumers Union, publisher of Consumer Reports, I appreciate the invitation to testify this morning, and Senator Cleland, I appreciate your kind comments.

The issue we are hearing discussed arises as if there is a balancing of equities here and these are all equities that consumers have tremendous sympathies for. Certainly we have always supported localism and the importance of local broadcasting. Obviously, it is critical to make sure that all businesses abide by the law, and also it is critically important that consumers have an opportunity to receive a clear network broadcast signal, and that satellite has a right to bring a distant signal where a local station does not come in clearly into consumers' homes.

But I would like to suggest, Mr. Chairman, that this is not the time to balance these equities. These are important equities. This committee, this Congress has made an important decision we opposed: to eliminate the regulation of cable even though it remains a monopoly. Given that fact, given the fact that rates are up almost four times the rate of inflation since the 1996 Telecom Act passed, rising every year consistently without competitive impact to hold the down, the balance is gone.

We believe it is now time to embark on a true war on monopoly to do everything imaginable to eliminate the obstacles to competition. Using your analogy, Senator Burns, please kick that can. If you have to kick it off the road, kick it off the road, but please kick it.

For every 5 percent rate increase this last year for cable, consumers are paying an additional almost \$2 billion. There is advertising revenue at stake over here. There is the growth of a satellite business over there. Please do not balance them. Take care of that \$2 billion hit every year that the consumer feels.

The concern about breaking the law is a legitimate one. Fortunately, you have the power to change the law. This is not an issue of going backward. This is an issue of going forwards. If there is an appropriate penalty, I would suggest to the satellite industry if it indeed marketed something in a manner that led consumers to believe that they should receive something that maybe is questionable, as the court has ruled, let us hold them accountable. Let us hold them accountable by requiring them to go into rural areas, by requiring them to offer a true price competitive package.

I would say grandfather those consumers. I do not believe there is any evidence that they did anything wrong. As a matter of fact, think of the anomaly here, where the Congress has stated, "we are so sick of regulation that even in the face of an obvious monopoly we want to promote competition and we want to push alternatives like satellite." So consumer, go out there, go out there and spend a lot of money. They do not come to your house, go out there and go to the store and buy the dish, get it installed. It does not happen automatically. Incur the expense, because we want competition. We

are going to now say, sorry, you lose your broadcast signals. Or somebody might have broken the law so you, consumer, go to court and sue them.

I do not think that will further the cause of promoting competition. Now, we can go back to regulation. As you know, I promoted it many times. It is not ideal, but it at least puts a lid on the rates, and we can balance these equities. I think that would be fair. But if we are not going to do that, I do not think there is a balance to be had here.

I think these consumers ought to be able to continue to receive what they thought they had a right to, which is network signals delivered by satellite. I think we ought to equalize the compulsory license between cable and all their potential competitors. I think everybody should live by must-carry, ultimately, when they are up and running, when they are large enough to be able to handle all local stations. I do not think localism will be harmed in the interim.

I think we need copyright reform. I think we need access to programming. I think we need to make sure that everyone has a right to receive a competitive option if we are not going to have regulation, and that means pushing aside some of these other equities at least temporarily until competitors are up and running.

If you are in an apartment building, anyone who offers the service ought to have the opportunity to use the wires in the building. Why not? Let us get more players in the market. Let us make everyone pay a fair share, but if we are going to have competition, let us make sure it comes soon.

Let me just conclude by what is, I think, a terrible irony of where we are under the 1996 Telecom Act. Just this week, consumers were told on the telephone side they have to pay a new line item, a new rate increase for number portability. The rates will go up so the consumer has the right to take his or her phone number to another local telephone company. It sounds good, but the problem is there are no other local phone companies to take that number to almost anywhere in the country.

Then on the other side we have the cable consumer, who is told rate regulation is gone because competition is supposed to be there, and yet your rates keep going up with no competition in sight. This is not the way this law should work. This is not fair to consumers.

I would suggest we need a new model here for not balancing business equities, although they are significant, but for providing consumers some protection, more competition and an end to these rate increases.

So Mr. Chairman, we support your legislation. It is clearly a step in the right direction. Much more needs to be done, and we hope you will move quickly to enact this and consider other matters as well that will promote more competition.

Thank you.

[The prepared statement of Mr. Kimmelman follows:]

PREPARED STATEMENT OF GENE KIMMELMAN, CO-DIRECTOR, CONSUMERS UNION

INTRODUCTION

Consumers Union¹ believes that the need to promote more competition in the cable industry could not be more obvious. Cable rates have risen about 21 percent since passage of the 1996 Telecommunications Act² and continue to climb three to four times faster than the rate of inflation (see Attachment A). Even the chairman of the Federal Communications Commission (FCC) admits that rates are going up excessively under his agency's "liberal"—in other words, meaningless—regulatory structure (see Attachment B). As a Congressionally mandated prohibition on regulating the most popular cable channels approaches (March 31, 1999),³ now is the time to act.

LACK OF COMPETITION TO CABLE

So far, despite rapid growth at the high end of the market, satellite television has failed to offer true price competition to cable. In inflation-adjusted dollars, cable rates are rising just as fast today as they did before the Direct Broadcast Satellite (DBS) industry began offering service.⁴ With up-front costs (for the satellite dish and related installation charges) running three to five times the cost of installing cable, and lacking carriage of local broadcast channels, satellite TV has been unable to discipline pricing for the most popular cable services.

In addition nearly one-half of satellite TV subscribers purchase both DBS and cable TV services.⁵ Even as satellite attracts previous cable subscribers, the cable industry makes more money by raising prices to all its remaining and new subscribers. For example, since passage of the Act, cable's rate increases yielded almost three times more revenue than cable lost to the growth in DBS subscriptions. See Attachments C and D. Obviously, satellite TV does not discipline cable prices.

In contrast, FCC data show that where cable faces head-to-head competition from another transmission "wire," cable rates are about 10 percent lower than where cable faces only satellite TV challengers.⁶

THE NEED FOR POLICY ADJUSTMENTS

The failure of federal policy to ensure reasonable cable rates makes it necessary for policymakers to devote greater attention to promoting increased competition to the cable industry. Legislation that puts cable's potential competitors on the same legal footing as cable companies, could open the door to more choice and lower prices for all TV services.

Recent deals that combine EchoStar Communications Corporation's DBS business with DBS facilities owned by News Corporation and MCI/WorldCom, and DIRECTV's combination with United States Satellite Broadcasting and PRIMESTAR, dramatically consolidate the satellite industry. However, these deals also could offer consumers more choice and lower prices if the consolidated satellite companies more aggressively compete against cable.

We believe it is critical to both enable and require these satellite companies to become head-to-head competitors with cable for the core TV services that consumers watch the most. This requires:

- Passage of legislation, like Senator McCain's S. 303, the "Satellite Television Act of 1999," and Senator Hatch's S. 247, the "Copyright Compulsory License Improvement Act" which—with modest modifications—begin to give satellite

¹ Consumers Union is a nonprofit membership organization chartered in 1936 under the laws of the State of New York to provide consumers with information, education and counsel about good, services, health, and personal finance; and to initiate and cooperate with individual and group efforts to maintain and enhance the quality of life for consumers. Consumers Union's income is solely derived from the sale of Consumer Reports, its other publications and from non-commercial contributions, grants and fees. In addition to reports on consumers Union's own product testing, Consumer Reports with approximately 4.5 million paid circulation, regularly, carries articles on health, product safety, marketplace economics and legislative, judicial and regulatory actions which affect consumer welfare. Consumers Union's publications carry no advertising and receive no commercial support.

² Public Law 104-104, 110 Stat. 56 (1996).

³ 47 U.S.C. Sec 543 (c)(4), Public Law 104-104 Section 301.

⁴ Dr. Mark Cooper and Gene Kimmelman, "The Digital Divide Confronts the Telecommunications Act of 1996," Consumers Union and Consumer Federation of America, February 1999 at 38.

⁵ Id.

⁶ In the Matter of Annual Assessment of the Status of Competition in Markets for the delivery of Video Programming, FIFTH ANNUAL REPORT, CS Dkt. No. 98-102, Dec. 23, 1998, at F-4, footnote 18

and other potential competitors comparable treatment under our nation's communications and copyright laws;

- Expansion of previous laws designed to hold down cable rates and make popular TV channels available to cable's potential competitors;
- Aggressive regulatory oversight of potential competitor's access to cable-owned programming or programming that cable companies exert monopolistic influence over; and
- Strong antitrust/regulatory review of satellite mergers to ensure that satellite companies continue to reduce up-front costs and eliminate other market impediments to direct price competition with the cable industry.

Because of the highly concentrated nature of the cable marketplace, policies designed to foster increased competition throughout the market require giving potential competitors breathing room as they seek to enter the market and expand their businesses. The two largest cable companies, Tele-Communications Inc. (TCI) and Time Warner, own a substantial stake in cable systems serving about one-half of all cable customers, and TCI has an ownership stake in 67 national programming channels while Time Warner has a stake in 30 national channels.⁷ In addition TCI owns about 9 percent of Time Warner. Most importantly, 29 of the 50 most subscribed-to channels, and 9 of the top 15 prime-time watched channels are substantially owned by the largest cable companies.⁸

S. 303 would enable most consumers who, in good faith, purchased satellite TV services, to continue to receive broadcast network channels. These consumers, who have made an enormous investment in exactly what Congress has been promoting—a potential competitor to cable TV—must not be held hostage to a battle between a highly profitable broadcasting business,⁹ and satellite companies over slightly greater profits.

Beginning with S. 303 and other pro-competitive measures, Congress can ensure that satellite and other potential cable competitors have an opportunity to challenge cable's dominance and gain a large enough market presence to offer a mass-market alternative to cable.

Unfortunately, experience under the 1996 Telecom Act and its predecessor, the 1992 Cable Act¹⁰ demonstrates that market entry does not always translate into mass-market competition. The satellite TV industry has been enormously successful by focusing on high-end consumers who are willing (and able) to pay hundreds of dollars for a dish, want hundreds of channels, desire specialized programming (e.g., sports, movies) and are interested in higher quality (digital) signals. While recent satellite industry efforts to reduce up-front cost to consumers are promising, they are not enough to promote rapid price competition with cable.

Consumers Union therefore believes that, as policymakers open the cable market to more competition from satellite TV providers, the satellite companies must be responsive to the public's demand for competition to the most popular cable offerings. Efforts to promote price competition by reducing up-front costs and adding local broadcast signals to popular cable programming packages must be encouraged, to jump-start mass market rivalry with cable. Only when satellite TV offers the vast majority of cable subscribers an alternative that meets their needs will cable companies be forced to bring down prices.

CONCLUSION

Immediate, forceful public policy measures designed to promote mass-market competition to the cable industry and block cable's monopolistic practices can offer consumers relief from spiraling cable rates. It is time for Congress, antitrust and regulatory bodies to ensure that potential competitors like satellite TV companies have a fair chance to compete on price with the cable television industry.

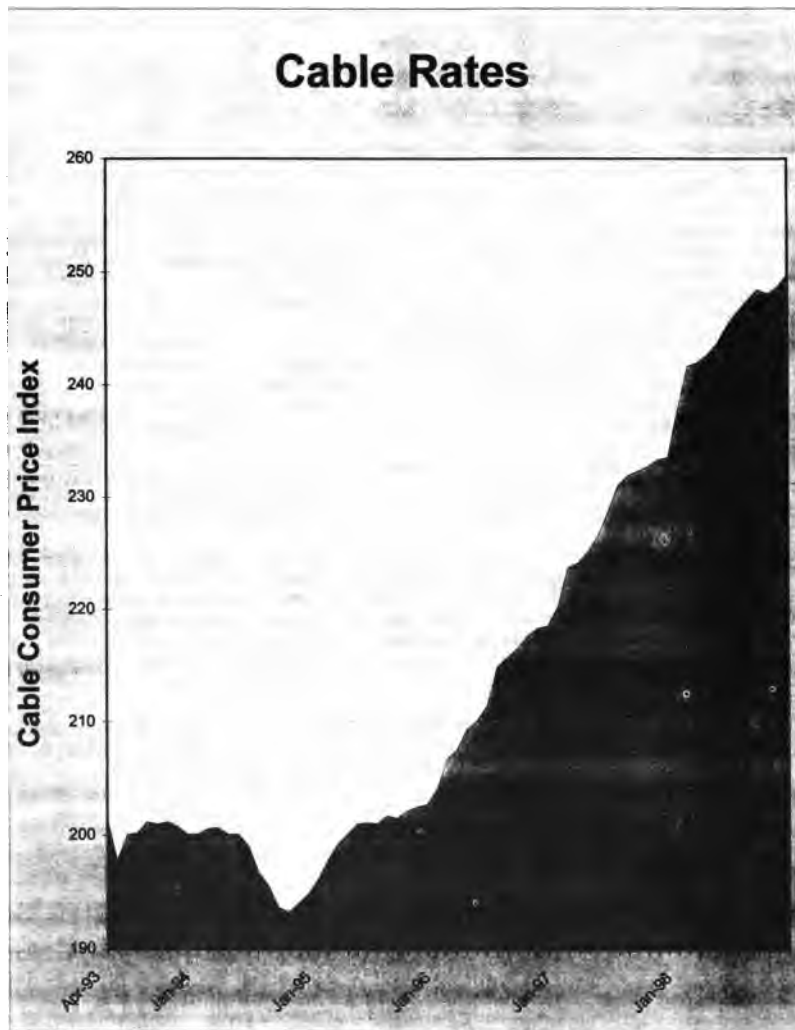
⁷ FIFTH ANNUAL REPORT, *op. cit.*, at Appendixes C and D.

⁸ *Id.*

⁹ Comments of Dr. Dean Alger, In the Matter of Local Broadcast Ownership, FCC En Banc Hearing, February 12, 1998 at 26.

¹⁰ Public Law 102-385, 106 Stat. 1460 (1992).

ATTACHMENT A



December 1983 = 100

Source: Bureau of Labor Statistics

USA TODAY

Money

FRIDAY, JANUARY 8, 1999

Business Travel Today
By David Field

By David Field

Go figure: Hertz added a currency conversion tool to its Web site to let renters calculate costs in dollars, local foreign currency and in the new euro. www.hertz.com

Drive, fly. Earn Delta Sky-Miles by buying or leasing new GM trucks or getting rental

Foreign destinations for business travelers

Europe	88%
Canada	74%
Asia	65%
Mexico, Central America, the Caribbean	65%
South America	49%

Source: Purchasing International

By permission of the publisher, John Wiley & Sons, Inc.

from 450 Automotive Dealers' Marketing members. Call 888.310.3435 for locations.

1.5 million-square-foot shared rental-car facility at San Francisco International.

Scale (1): Horizon Air has cut fares by as much as 35% for travel by June 13 on routes covering the Pacific Northwest. Buy tickets by Jan. 13.

Air New Zealand has
s for travel April 13-
Buy tickets by Jan. 31,
off; buy Feb. 1-28, get

WHAT WORLD

IN SOLAR-SYSTEM MEASUREMENTS, WHAT IS THE INSTANCE OF ONE ASTRONOMICAL UNIT?

Answer: the distance between Earth and the sun (93 million miles).

Northwest was partnership with Sprint game the distance for you. Switch to Sprint and receive up to \$1,000 in Sprint® prepaid bills. Text and play in on at page 18

KLM

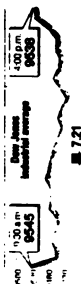
NORTHWEST AIRLINES

www.klm.com 1-800-225-2323

MONEYLINE

THE UNIVERSITY OF CHICAGO PRESS

Thursday markets



Series	Class	Change
...diesel composite	2'26.09	5.23
...standard & four's '00	1'79.73	2.61
...primary heat 20 years yield	6.00	11.00

By David Lieberman
USA TODAY

NEW YORK — Federal Communications Commission Chairman William Kennard told Thursday that the FCC was probably too liberal in allowing cable operators to raise subscriber rates the past few

The unusual admission comes less than three months before federal oversight over airline prices is due to expire. And it erases criticisms that consumer advocates have lev-

Since then, rates have increased about 6% a year — far faster than inflation. In 1999, while prices rose 7.3%, while consumer prices generally appreciated 1.7%, the FCC report-

"Appropriate regulation could have saved consumers billions on their cable bills," says Consumers Union's Gene Hammelman.

been about 5%.

Former FCC Chairman Reed Hundt gently took issue with Kenward's remark.

"What was necessary was not more rate regulation, but more aggressive moves to promote competition," he

Hendt, who resigned particularly wants to change the rules that satellite broadcasters



ward
in 1997,
press to
prevent
from of-

FCC chief admits cable oversight 'too liberal'

But cable's chief trade group says that subscribers get a good value. "The industry is investing in new and better programming in new and better programming, and people are watching more cable than ever before," says National Cable Television Association's Daniel Brennan.

...ing signals from local TV stations. Kennard also wants to help satellite companies. The FCC's annual report on video competition, released in late December, found that cable serves 55% of all consumers who buy multichannel TV ser-



14. *Eve Rosen with X-ray*

...soon about 55.
Former FCC
Chairman Reed
Hand, said that
the FCC had
been "too
passive with
Ken-
nedy's remarks."

the FCC since 1994 cutting rates about 10% a year. But, says operators more increase prices.

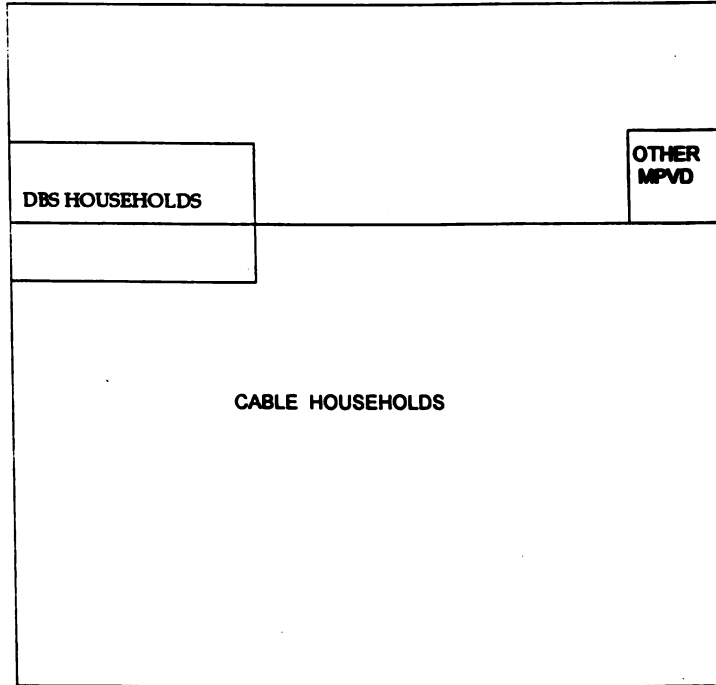
But, rates have in- creased 9% a year — far more than the 1% in- flation. In 1990, rates rose 7.3%, while prices generally ap- proached 1989 levels. In 1997, the FCC report-

ing that the FCC will initiate regulation to save consumers their cable bills, "the FCC will initiate the United's Gene-

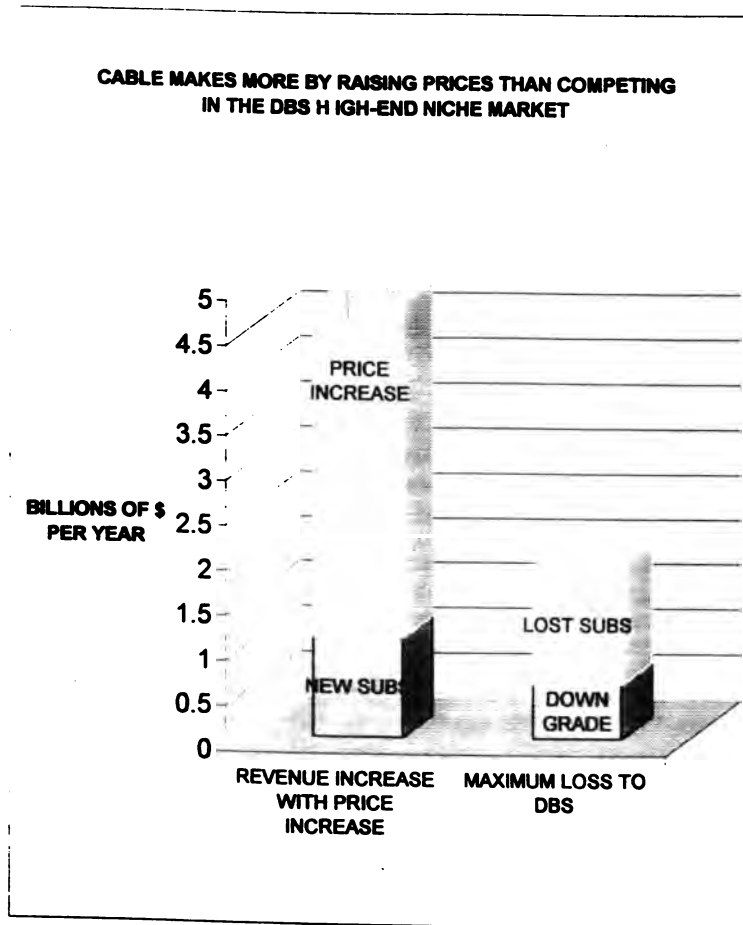
ral. For 1999 have

elated at this time, after which, if gas prices fall 15%, it gets a legway to a breakeven. Since the tax was created about 1980, it has been a faster than average rate of inflation, but it is a taxable private consumer, not a business. It is a tax on a tax, as it is called in the legislation. It is a tax on a tax, as it is called in the legislation. It is a tax on a tax, as it is called in the legislation.

NEW YORK — The unusual ad valorem rates the telecommunications companies less than three percent before federal over-the-air cable subscriber rates the consumer advocates.

ATTACHMENT C**MARKET SHARE AND MARKET OVERLAP
IN THE MULTICHANNEL VIDEO PROGRAMMING DISTRIBUTION MARKET****TELEVISION HOUSEHOLDS**

ATTACHMENT D



SOURCE: FCC, Fifth Annual Report, Appendix C for subscribers. Assume \$5 increase since 1/1/96.

The CHAIRMAN. Thank you, Mr. Kimmelman.

Mr. Fisher, are you aware of any consumer complicity in the illegal reception of distant network signals by satellite subscribers?

Mr. FISHER. I am not sure I understand the question, sir.

The CHAIRMAN. Are you aware of any consumer complicity in the illegal reception of distant network signals by satellite subscribers?

Mr. FISHER. Do I know of consumers who knew they could receive network signals but opted for this anyway? Is that the sense of the question, sir?

The CHAIRMAN. I am asking if you know of any consumer who when subscribing to satellite television knew that it was at least in the definition of the court order illegal and that they were subject to having their reception shut off?

Mr. FISHER. Yes, sir.

The CHAIRMAN. You know of consumers who were aware of that?

Mr. FISHER. Yes, sir.

The CHAIRMAN. Perhaps you could give us some examples, because to my knowledge average consumers saw that they could buy a satellite dish or have someone come and install it and they were going to receive certain programming, but you know of consumers who knew that it would be judged illegal by some court?

Mr. FISHER. Yes, sir. I mean, they did not know that it would one day come to court, but they knew that they were giving a nod and a wink. They were led down that—in fact, I called to see whether I would qualify. I live about, oh, 4 miles from WSB Television's tower in Atlanta, GA, and this was early on, and the process was one where I was told essentially, look, here is what you need to say. Just say you do not like your picture, and that will be fine.

So the answer is yes, sir, I do know folks, and I have friends who understand clearly that they needed only to give this specific answer and they would then be qualified by the suppliers.

The CHAIRMAN. Mr. Kimmelman, do you know of consumers who are that sophisticated?

Mr. KIMMELMAN. I imagine there is a lot of creative marketing that goes on. We see it every day. Everyone probably gets annoyed during their dinner time by marketers trying to push a service or push a product, but I do not see how that is really the issue. It is hard for me to imagine, but there might be some people.

Consumers want to see their local broadcast stations. It is hard to understand why millions of them would go out and seek an NBC affiliate or a CBS affiliate from across the country if they care about knowing about local news, local sports, what the weather is going to be in their community.

It boggles the mind, so it is hard for me to believe this is any broadbased problem of consumers just willing to lie, effectively, in order to be able to get a distant network signal that does not really serve most of their local needs.

The CHAIRMAN. Well, the information that we have, Mr. Fisher, is that most people that subscribe to satellite and bought the dishes did it because they thought that they would get more sports news information, et cetera, that they were not engaged in some grand conspiracy to rip off the networks or their local affiliates.

My point is, obviously, that if nothing is done these people in my view, and perhaps not yours, that in all good faith invested a sig-

nificant amount of money, will be deprived of certain programming. That is what we see as the problem here. Your answer, as Senator Rockefeller mentioned, is everybody to buy an antenna, which is not necessarily a viable option nor, frankly, should they have to, given the circumstances under which most of them, at least in my view, decided to go to the satellite television service.

Would NAB support an alternative that would allow its existing subscribers to keep their distant network signals if the satellite TV companies compensated the local broadcaster for any loss of revenue that resulted, Mr. Fisher?

Mr. FISHER. Sir, I think the answer to that is, we could not, because we do not believe such a method can truly exist.

May I ask if this is in reference to the suggestions made in the letter you sent to your colleagues about a formula that might have been used some years ago? If that is the reference, sir—

The CHAIRMAN. It is not necessarily to any formula, but I am saying if there was some way of working out some kind of compensation—

Mr. FISHER. The difficulty here is that the only thing we have to sell are the eyeballs that we bring together for advertisers. That is the only source of income we have, no other fees, no other structure, and the difficulty today is that with audiences fractioned the way they are any loss is very, very serious. There simply is no formula that could be created that would adequately compensate for the loss of the only thing that we have to sell.

The CHAIRMAN. Mr. Hartenstein and Mr. Kimmelman I believe are correct in stating that the real source of the problem with local versus distant network signal carriage is the Satellite Home Viewer Act's outdated and irrelevant definition of a viewable signal, instead of grandfathering, would the NAB support the alternative of scrapping the old definition and directing the FCC to come up with a better way of describing what the average viewer would reasonably consider to be a good quality signal?

Mr. FISHER. The FCC has, as you know, sir, most recently reviewed this, and in our view—as have two Federal courts restated again that the current standards have been wonderfully successful in predicting whether or not over-the-air service is achieved.

The FCC suggested most recently two changes. They suggested that there be a recognition for interference from other signals and second a recognition of interference from ground objects like trees or foliage or buildings, and the industry is very prepared to accept these suggestions and, in fact, are going forward right now in the waiver process and using as rapidly as we can this new definition which takes into account some new things that are available to us to put in the equations.

There is nothing on the record to my knowledge, Mr. Chairman, that suggests that the current predictions have, in fact, turned out to be anything but overwhelmingly accurate. I believe the FCC concluded that they were well over 90-percent accurate in determining the viewability of television signals.

The CHAIRMAN. It is my understanding that the FCC has made a new definition of how you measure it, not changed the definition.

Mr. FISHER. Well, they suggested that we bring a few more factors into it, including the use of a 20-foot level for single family

homes, instead of 30, which the industry thinks is very reasonable, and then these additional factors of ground clutter, ground-based objects and interference. That is my understanding, sir.

The CHAIRMAN. Senator Burns.

Senator BURNS. I am interested in a couple of things. Mr. Kimmelman, you were speaking—a while ago you mentioned copyright reform. I would like to have your views. How do you think—what kind of reform are you referring to there?

Mr. KIMMELMAN. Well, we support the thrust of Senator Hatch's bill. We are talking here about making sure that any potential competitor to cable has the opportunity to get access to broadcast signals at a fair price. It does not have to go through a more complicated process, does not have to pay higher fees.

Let us have parity. Make sure that for the same product if we want other players to compete with cable they have access to it under the same terms and conditions. This means fair compensation to copyright owners, obviously, but just on the same level as what cable pays.

Senator BURNS. The signal intensity test at homes wanting to receive distant network signals costs well over \$100 to get those things tested. What predictive model would you propose to hopefully render these expensive tests unnecessary to the greatest extent possible? Mr. Kimmelman.

Mr. KIMMELMAN. Senator Burns, I cannot speak to what is the right test, other than the common sense gut-level test of why are we not measuring this from the consumer's eyeball point of view of, do you get a good clear picture? Consumers do not care about grade A, grade B, Longley-Rice maps and this, that and the other.

It is very simple, a gut-level question, and when you are already asking the consumer to go out and spend a few hundred dollars to get set up with an alternative to cable, it is hard for me to imagine that it is a good procompetitive move to say, and also go out and buy and spend to have a test done to see whether you have a right to distant signals or whether you have got to set up another antenna, which by the way also costs money.

It might be simple, as Mr. Fisher indicates, but all these things cost money. We are talking about something that already has dramatic up-front costs compared to cable, many times more expensive than cable, and so why are we piling on all of these additional burdens?

It strikes me that the chairman's bill that you have helped him put together has the right calculus where the FCC can go back and study this. If Mr. Fisher is right, then things will work out just fine for the NAB and for local broadcasters, but it seems to me we ought to start from the perspective of, in today's world you should get a clear picture.

That is what motivates the consumer to get up off the couch and go out to Circuit City and even think about buying a dish, because they are having trouble with reception or they want to get more stations. They want to have an alternative cable. Let us not make it more difficult.

Senator BURNS. Mr. Fisher wants to respond.

Mr. FISHER. Senator, there is nobody who wants a second distribution system in the community more than broadcasters. Our

signal will have value that will be enhanced, and our distribution will be enhanced if there are multiple folk who are looking to carry our signal.

The current system has most recently been reendorsed by the FCC as highly predictive. When in the court decision the plaintiff's counsel went to the very sites that the satellite distributors claimed had an inadequate signal, the videotapes proved conclusively to two Federal courts and subsequently to the FCC's cable Bureau that the signals were wonderful and, frankly, no further authority needs to be cited than perhaps Mr. Hartenstein's company himself. He has said in his Web site that the combination of a DSS system and an off-air antenna is unbeatable.

Senators we plead with you to recognize that most consumers overwhelmingly can receive over-the-air television with an antenna, and there is something hard for broadcasters to understand in terms of folks who are going to spend several hundred dollars on equipment to receive satellite channels having difficulty adding another \$50 to replace the over-the-air antenna that perhaps their cable supplier removed many years ago, and we are working to ensure as an industry that folks are, in fact, getting waivers when they cannot see us.

Tens of thousands of waivers are being provided. Our own station in Seattle is providing thousands of waivers to folks who truly cannot see over-the-air television.

Senator BURNS. I do not know, we have to deal with the translator situation, and we will do that. Is there a combination antenna that could receive both satellite and local?

Mr. FISHER. When you say a combination, it requires a second item on the plant, I guess is the best way to put it, but DIRECTV could probably speak more authoritatively. They are marketing, as our other satellite dealers, satellite distributors, a combined solution that has an antenna and a dish. I do not know technically how it is put together, but it is a package that is being offered.

Senator BURNS. Is there one available, Mr. Hartenstein?

Mr. HARTENSTEIN. Yes, there is, Senator Burns. However, you have to be in an area where you can get your off-air signal.

Senator McCain, Mr. Chairman, I think he hit the nail on the head. What we are talking about here is a standard, the grad B standard was set up in the fifties for one purpose. What we are saying here is that from a consumer's perspective I think we need a different standard, and that is one we have endorsed, and I think given just a small amount of time the FCC can come up with.

There is also a predictive model, then. It is called the TIRIM—all I remember is that the T stands for terrain—a predictive model that is much better at predicting accurately where people can get their signals and where they cannot, but you have got to take into account buildings, mountains, foliage, things like that.

That is all we are looking for here, and we think that is available. TIRIM itself was developed by the Department of Defense, and is owned and maintained and upgraded by the NTIA. It is all right there. I think the FCC has said and is looking to Congress to come back and tell it to reset the standard and from that point forward we are ready, willing and able to put that predictive model very simply into test.

Senator BURNS. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Rockefeller.

Senator ROCKEFELLER. Thank you, Mr. Chairman.

Mr. Hartenstein, the question was raised earlier about the so-called only going to the basic markets and forgetting the rural ones. Obviously, some of us have an interest in that.

I guess the question is, the technology is not—in other words, you could argue that for the long term that the best solution for West Virginia is, in fact, satellite, because of all the mountains and the terrain problems, and that something coming down is better than something going laterally and wandering around, including rabbit ears, or a modern version of it.

On the other hand, the technology is not there yet in order to take, let's say, the Los Angeles NBC News that the Beckley, West Virginia, or Welch, West Virginia takes down, and have that translated into a Beckley or Charleston or Bluefield local broadcast, which has to happen. That is part of what has to happen.

What is the situation on that technology? How long is it going to take to get to the point where they can do that, where you can pull down local broadcast from satellite?

Mr. HARTENSTEIN. The problem is not so much technology as it is just sheer bandwidth. There is only so much bandwidth that is allocated to satellite delivery direct to home, allocated by the FCC.

We could do West Virginia tomorrow, but then we would ignore the other 49 States, and the problem is simply this.

With a limited amount of bandwidth, and the fact that there are today some 1,600 local television stations across the country, and once digital is incorporated and those 1,600 stations are all in the digital spectrum, there is almost a fivefold increase in the number of channels, it is not a question of technology. It is just a matter of choice as to which markets can be served from the available bandwidth. There is not enough, frankly, to go all the way around to serve all of the markets and all of the States.

Senator ROCKEFELLER. But does that, then, make the question that Ron Wyden asked in fact true? That is, that you are simply only going to go to a certain number of markets with local, and beyond that you will not serve, or you cannot serve, will not serve, whatever.

Mr. HARTENSTEIN. The laws of physics will prevent us from being able to go everywhere with satellite. That is why we are looking to, as Mr. Fisher pointed out, we are looking and have been looking at the best antenna, off-air antenna combination designs with satellite antennas so that we to the greatest extent possible in homes that have the ability to receive an off-air signal get the combination of the local broadcaster signals, today in analog, tomorrow in digital, combined with a national overlay into those homes that are not in a line of site, as you said, live in a canyon, behind a building, whatever, that we can give a distant network signal.

The problem is not unique to West Virginia. Folks in San Diego would rather get a San Diego local broadcast than a Los Angeles local broadcast. It is no different.

Senator ROCKEFELLER. I understand. OK, Mr. Kimmelman, let me ask you this. If this bill were to pass, I happen to agree with what you said about the \$2 million. Yes, it probably was, whether

it was illegal or inadvertent, I do not have the knowledge to know that, but you do not penalize the 2 million, because they did not have anything to do with it.

They are innocents, and they may be from Max's area where they have to find out what the weather is going to be, and they may be from Midgeville. Did I get that right?

What will this bill in your judgment do for cable rates?

Mr. KIMMELMAN. Unfortunately not much. There is much more to be done, but I believe this is a measure that is important to not set satellite back, making it more difficult to compete with cable by putting more burdens, more costs on an industry that is at least trying to compete. I will say that I think satellite is also trying to bring down these up-front costs as the cost of the dishes come down and they come up with more innovative packages, but it is just not there yet.

It does not discipline cable pricing. We have a long way to go, so this is just step one. There are a lot of other things that will need to be done here.

Again, I recommend slapping a lid on cable rates for a while longer until we can figure this out, because I do not believe there is an overnight solution, but certainly stimulating more competition would be great.

Mr. Fisher makes a very good point. We have just done a study showing that it is very much high end consumers who seem to be able to benefit from a lot of the new services, and maybe they can spend \$50 more, but we thought—

Senator ROCKEFELLER. I want to ask Mr. Fisher a question. My time is about to run out.

Mr. KIMMELMAN. I was going to say we thought the goal was to have everybody afford the options, not just the high end. That is the problem here.

Senator ROCKEFELLER. Mr. Fisher, when the cable systems started, the broadcasters opposed that. When the must-carry came into being the broadcasters opposed that. Now, that has been rendered moot by the Supreme Court. That was my impression. That is always—the visits I got, we are against this, we are against this, from my home State.

When local stations are delivered into local markets, when that day comes, won't broadcasters benefit from that?

Mr. FISHER. Senator, there is nothing we want more than local television stations to be delivered through every possible means to the viewers of those local communities. We have been in favor of must-carry retransmission consent.

The only thing that troubles us is when our signals are taken for free, and when other people attempt to build their businesses on our backs with either no compensation or just ignoring our franchise and business negotiations with our network suppliers, so we are, I think, thrilled and highly supportive of the Senator and the Chairman and this committee's efforts to find a way to legislate local to local service. We are strongly in favor of that.

Senator ROCKEFELLER. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Gorton, I would ask your indulgence. Senator Cleland has to go. He is next in line.

Senator CLELAND. Thank you, Mr. Chairman. Mr. Fisher, let me see if I have gotten this correct. I am trying to figure out the battlefield here. There are three basic zones, as I understand it, vis-à-vis an antenna and its ability to, shall we say, transmit a signal.

One is the A area, which broadcasters look upon as their franchise, their copyright, their zone, and nobody really has a problem receiving the signal. Then there is the B area. That is a gray area, where there may be signal interferences of some type, and then there is, shall we say, the white area, in which your signal is not transmitted effectively, and everyone would agree.

May I ask, in the white area, there is no problem from broadcasters saying, go to it, satellite cable, go at it, Pony Express, whatever. You are in the white area. Go for it. Now, that is your position, correct?

Mr. FISHER. Senator, in the white area, if we are not serving there is no financial issue for us. They are not seeing us under any circumstances, and it is in our interest that they be exposed by hook or by crook to network service. The only refinement I would make is the definition of the B area. It is only on the fringes of the B area that there are any questions. The regular B area are frankly the suburbs of Atlanta.

Senator CLELAND. Well, that leads me to where the battleground really is. I gather the battleground for broadcasters here, correct me if I am wrong, is where the satellite communicators come in and transmit a signal, in effect, in your franchise area. Broadcasters feel they are fully capable of delivering a legitimate signal, and therefore you feel your market is being ripped off illegally, which is why the court decided with you. Is the battleground area basically in the B area, or the fringe of the B area?

Mr. FISHER. We have gotten there. It was not 6 months ago, when the satellite industry also claimed that no one could see us in the A area either. I am reassured that today they have concluded, well, the A area is awfully clear, so now it is the B area that they are citing. The arguments are the same. You are absolutely correct. We believe we serve, and the FCC believes we serve the overwhelming majority of people in that area.

Senator CLELAND. Based on your testimony, you feel that the way out of this dilemma, or the way to settle the battlefield here, or deal with these battlefield issues in that area could occur in two ways, (1) antenna technology, which you indicate has improved substantially, and (2) the authorization of local-to-local transmission, which would mean a change in the law. I gather that is the thrust of your argument.

Mr. FISHER. It is, Senator, and in the meantime I just want to reassure this committee that broadcasters nationwide are working diligently on a case-by-case basis to grant the waivers to the people who cannot see us and explain the issue to the people who can, and we have found folks to be remarkably responsive when we explain the reality that the antenna can bring in the signal, and they have acknowledged, well, that is probably true, and I will just have to get it rehooked up.

Senator CLELAND. Thank you, Mr. Fisher. Thank you, panelists. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you. For the benefit of the Members, the custom and the practice here is always to go by order of arrival, but we go from one side to the other with each questioner, and if there is any objection to that I would be glad to entertain it.

Senator Gorton.

Senator GORTON. First, Mr. Chairman, I would like to put a brief opening statement in the record.

Second, I would like to say one of the reasons this is both so interesting and so frustrating is that each of the representatives here has a very good public policy reason for his position. Given my background as a State Attorney General, the emphasis Mr. Kimmelman has on what we are doing for the consumer, that as our No. 1 goal is, it seems to me, absolutely appropriate.

One of Mr. Fisher's stations is a constituent of mine, and the preservation of strong and prosperous local broadcast signals has always been an extremely high priority for Congress. I am a double customer of Mr. Hartenstein both in Seattle and three blocks from the Capitol here, without any difficulty in getting the local signals off an antenna, and so not one immediately affected by this problem.

It does seem to me, however, that while we set up a waiver kind of situation, that just to begin with I have two suggestions, which are also questions for the two on the end of the table here.

Mr. Fisher has emphasized that large numbers of waiver requests are granted. I would like to know through him and the National Association of Broadcasters what percentage, not just numbers, but what percentage of waivers are, in fact, granted, and how a decision is made by stations across the country either to grant them or not to grant them.

Second, while it is certainly in Mr. Hartenstein's interest to sort of stir up the consumer to pressure us to change the law, why doesn't DIRECTV and why don't your competitors just automatically send out a waiver form with your next monthly bill with instructions to people to fill out such a waiver form and send it to their local stations if they want the national station from you?

Would it not be in your interest, in your long-range interests and your relationships with the others to make the waiver somewhat easier? Whatever the number of waivers that have been granted, it is obvious that there are lots of people who have never applied for them, and I suspect do not have the remotest idea that they are available.

Could I get some comments from each of you on those points?

Mr. FISHER. I know there are some antitrust issues, Senator, in trying to collect the data, but I certainly will assure, and because they are present behind me, that the folks who run the NAB will certainly try to be as responsive as possible to you.

I can tell you only that for KIRO-TV in Seattle, that as of last night we had received about 3,000 waiver requests. We estimate that we had, interestingly enough, granted 2,700.

I asked the general manager whether that was surprising, inasmuch as our map showed so many of the illegal subscribers were within our grade A and grade B, and he told me that it was an odd omen, and that they appear to have been self-selecting, and that the folks who are approaching us for waivers are largely speaking

outside the grade B, that they are truly unserved and that, in talking to people on the phone, they had a large number of calls from people who called and inquired that did not ask for a waiver, acknowledged on the phone they could see us, and said under those circumstances that they would not, in fact, be submitting a waiver.

Senator GORTON. Well, 3,000 and 90 percent acceptance rate is impressive, unless there are 30,000 or 300,000 people who fall into that category, and it seems—my concern is with the very large number of people who do not know that that waiver is available under legitimate circumstances, and that is why my suggestion to Mr. Hartenstein and his competitors would be, why don't you make it easier for people to apply for waivers?

Mr. HARTENSTEIN. Senator Gorton, we have in fact communicated a number of times already with our subscribers as to the process and the potentiality of us having to shut them down. The recourse has been, step 1, to identify directly those subscribers that are allegedly in a grade B area, to indicate that there is a waiver process, who the affiliates are, and how to write to them.

We have stacks and stacks of waiver rejections. There are a few instances where the specific network affiliate in a specific market has routinely granted waivers. I will tell you those are the exceptions, because there are many, many more who absolutely reject all of the waiver applications.

The final recourse, then, is to their elected representatives both in the Senate and in the House, and we have indicated that we are in a situation such as we are that even the FCC has indicated it needs more guidance and does not have the jurisdiction that Congress could give it.

Senator GORTON. Is there any penalty for an unreasonably rejected waiver?

Mr. HARTENSTEIN. Not that I am aware of, sir.

Senator GORTON. Would that be appropriate?

Mr. HARTENSTEIN. I have not thought that one through. It is just ironic that we are sitting up here, where I have always felt that the broadcast industry and the DBS industry—I mean, there is the "B" in DBS, it has broadcast in it—that we are at odds on this. We are trying very hard to come to a solution.

Senator GORTON. That, if I may interrupt, as my red light has gone on, I agree absolutely with that, and I certainly agree with Mr. Kimmelman that the more competition we can create for cable and the faster we can create that competition the better off all of us are.

I would just urge some kind of reasonable negotiations between the groups at the two ends of this table to come up with a way that serves the consumer interest and serves the interest of the broadcasters and you as competitors as well. I am sure it is out there somewhere, and I am frustrated, Mr. Chairman, that we have not found it.

Thank you.

[The prepared statement of Senator Gorton follows:]

PREPARED STATEMENT OF HON. SLADE GORTON, U.S. SENATOR FROM WASHINGTON

An unfortunate convergence of events has landed us in our current situation. It is apparent that, in many instances, satellite providers have disregarded the law.

They have made little or no effort to determine subscriber eligibility to receive distant network signals.

The question before us now, however, is whether or not the law itself is flawed. I ask this question not to offer excuses for the satellite industry. But what the broadcasters view as strictly a legal issue has become a political and consumer issue. I, like many of my colleagues, have been inundated with phone calls, letters and e-mails from constituents who are facing the loss of their network programming. The vast majority of these constituents report that, despite the fact that they are "predicted" to be able to receive an over-the-air signal from their local broadcaster, in fact, they cannot.

I expressed my frustration at the Committee mark-up this morning that the differences between the broadcast and satellite industries have not been resolved, and that they have not been resolved in the consumer interest. If, in fact, current law is flawed in the standard by which it determines a satellite subscriber's eligibility to receive distant network programming, that is something we must look at. In the meantime, the legislation passed out of committee today provides some immediate relief to those existing satellite subscribers affected by the current legal situation by removing the immediate threat that their existing network programming will be cut off.

Both sides in this battle have legitimate concerns and interests that can, and should, be balanced. American consumers also have a legitimate interest. Both the broadcast and the satellite industry have cadres of lobbyists more than capable of protecting their respective interests. It is our job, Congress' job, to protect the consumers' interest. It is in their interest that Congress needs to act, and I am committed to working with my colleagues to achieve a resolution that is fair to all parties involved. The legislation reported out of the Senate Commerce Committee today is a step in the right direction. However, much work still needs to be done.

The CHAIRMAN. I share your frustration. Senator Wyden.

Senator WYDEN. Thank you, Mr. Chairman, and I would just say, gentlemen, I am still concerned, after having listened to all of you, about the prospect for these small rural communities to essentially be sacrifice zones. In addition, when it comes to local news and local programming, the policies we are talking about are not going to allow a sole broadcaster, a small cable operator like the one in Walport, OR, that serves 969 people and has one full-time employee, to exist. I do not see how they are going to exist.

So my first question to you—and I am going to direct this to you, Mr. Kimmelman—is, can you offer us any suggestions about how we might supplement the McCain-Burns legislation to create some incentives for those small cable people and small broadcasters in the rural communities to exist?

The CHAIRMAN. Besides reregulation of cable. [Laughter.]

Mr. KIMMELMAN. Well, there is a problem of whether competition will reach all communities, and that is what we are facing. I believe if Mr. Ergen were here from Echostar he would tell you that he would like to beam as many local broadcast signals as he can. He has got a business plan to beam a lot.

I do not know if he can get everywhere, but we definitely need change in copyright laws. We need to make sure that these broadcast signals are available to every potential competitor as easily and under the same conditions as cable. It is possible.

Now, for the small cable company, I would think that they have every opportunity under the 1992 Act through must-carry to carry local broadcast signals. I mean, it is about as strong a legal right for the local broadcasters to get on cable systems as I can imagine, so I do not see a problem there in terms of protecting localism.

We need to look to beyond satellite. There are legitimate questions raised about whether other wires are available, telephone or electric wires. There was an article in the Post the other day, Star

Power in this community coming in, competing with cable, immediately offering 15 percent lower rates, or 30 percent if you base it on a per-channel basis.

Whether it is electric wire, its rights of way, or the telephone wire, we need to make sure that all impediments to those potential competitors are knocked out of the way getting into both apartment buildings and getting into the average consumer's home. I think that is the only way we have a true option to test this market.

Senator WYDEN. You heard Senator Stevens talk about it early on, I did, Senator Rockefeller. Just know that there are a number of us on this committee that would be interested in offering some amendments to what we think is a bill that has a lot of very good points. We are open to your ideas and suggestions, but the prism here is the small broadcaster and the small cable operator.

A question for you, Mr. Hartenstein. Senator Rockefeller asked you about the technology to do local-to-local for all channels and all markets, and your answer essentially said that this was about bandwidth and the law of physics.

I do not think it is the law of physics. I think it is the law of money, and the money is going where the best opportunities are in a capitalistic system. I would tell you that I would hope that we could also steer into this some equity in the use of bandwidth.

Because a lot of us cannot go home to the Walports of America and say, you all are just going to have to wait. Some day it is going to get there, kind of like the marquee at the old movie house, coming soon, but you are going to have to wait while the lucrative opportunities go to the metropolitan areas.

I think that if you all do not do this voluntarily to try to come up with some equity in the use of bandwidth so that the rural communities get a fair shake, I can assure you our constituents are going to come to us and say, you all ought to mandate it on the Senate Commerce Committee, and I am not going into this with a kind of regulatory run-it-from-Washington kind of mode, but I just pass that on if you want to comment.

Mr. HARTENSTEIN. Well, Senator Wyden, I have a constituent in Oregon as well. It is my brother-in-law and sister-in-law. He is a UPS driver, lives in Roseberg, but goes to communities such as Glide and Riddle, Sutherland and all of them, and with all due respect there is a limited amount of spectrum that the FCC has allocated to us.

My competitor, Echostar, has a business plan that wants to go to as many local markets as is possible, and we have looked at it as well, and some of the folks sitting behind me from Capital Broadcasting are looking at that, and we are talking to them.

The maximum available amount of bandwidth that we can muster would serve something in the order of 70 or so markets if the full must-carry requirement is carried, so all markets that we serve, we serve all of the channels.

There is only so much bandwidth with as many television stations as they are today, and we continue to look at that. That is one thing we continue to look at.

At the end, you are right, there are economics involved and the capital to put that in and then to operate it as a going business.

Senator WYDEN. Just know we want to see those 70 markets served, but if we cannot explain to the other markets why there are not any opportunities for them at all for local news, emergency services and the like, what happens is this debate about the communications have's and the communications have-nots is going to increase. There will be pressure on the members of this committee to be pushing for some regulatory models that I suspect you will not like a whole lot.

Mr. HARTENSTEIN. In addition to directing the FCC to come up with a better standard, you might want to consider directing them to give us some more bandwidth to look at as well. That would help fix this situation.

Senator WYDEN. That is a good argument, but then you have to say, are you using your current bandwidth as equitably as you possibly can, and understand I have reservations on that.

I have listened carefully to what you said, and Senator Rockefeller, and the point about the technology not being there. No questions about it, but I think there is a real equity issue with respect to how that bandwidth issues, and I am sure we will talk about it some more, and we will look forward to any suggestions that you might have.

Mr. FISHER, did you want to add something?

Mr. FISHER. Let me just throw out one idea. This would obviously take some work to fashion, but if, in fact, the small and medium market imperative is important, perhaps some solution that is modeled similarly to what the REA accomplished is worth approaching.

This is a matter, I think, as you put it straightforwardly, of money. The satellite deliverer has a certain amount of bandwidth. He wants to use as much of it as possible to provide national channels, and that is his business plan, and he has another section he is willing to devote to local, and that gets him down to so many markets to pull more of his national channels off.

To add more local markets creates a business issue for him, and he is telling you he does not want to do that, so perhaps there is some other way to provide the financial underpinning so that all of America can see local television by satellite, if that is something this committee feels is important.

Senator WYDEN. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Bryan.

Senator BRYAN. Thank you very much, Mr. Chairman.

Gentlemen, this is my 11th year as a member of this committee, and we have had various business groups appear before us, cutting across the broad spectrum of businesses in America. Each of them has come in from time to time to make eloquent, sometimes impassioned, defenses of the capitalistic free enterprise system. I think if you ask Americans who do not have great sophistication in the new nuances of economics, they would say, in a single word, that what that is all about is choice, that they have an option, they have a choice. That is the thing that kind of characterizes our system as opposed to others.

I guess my question is a philosophical question. I suspect that the great majority of television viewers would rather have the local signal. I would think that the evidence would overwhelmingly sup-

port that proposition. But if someone was, say, recently transferred from the Bay area to Reno, who has a longstanding interest in the community, why should not that individual in Reno, NV, the right to get the San Francisco signal by way of satellite?

What is the philosophical danger? How is the Nation adversely impacted? What is the philosophical danger that we need to carefully guard and legislate against?

Mr. Fisher, let me toss that one to you.

Mr. FISHER. Senator, I appreciate that question. There is no difficulty with the transmission of locally generated material to anywhere in the United States in which negotiations and technology would allow it to go. If the local San Francisco news, on KTVU, a Cox-owned television station, can be sent to other communities around the United States, that would be wonderful for those folks who want to know what is happening in San Francisco.

But the issue is all of the other programming where we have negotiated, at huge cost, a variety of rights. If WSB Television, in Atlanta, has paid millions of dollars to run the Oprah Winfrey Show at 4 p.m., it is devastating if other purveyors and distributors the Oprah Winfrey Show in other communities suddenly are brought into our town. What we thought was an exclusive right to broadcast this syndicated material suddenly evaporates.

When we negotiate with our network suppliers to be the folks who distribute their prime time signals in our local markets, there is an important decades' old economic system that has been built up between those distributors and us. It would be devastating to our industry to have precedent shattered, where suddenly anybody can bring in those other programs.

Senator BRYAN. Well, let me just play the devil's advocate for a moment, not knowing the specifics of your industry. Would not the market make the necessary adjustments and discounting in terms of the values that you would pay if that system were in effect?

Mr. FISHER. The difficulty is that, in the end, there might be some changes in what I pay, but the entire rest of the system of localism ends up being destroyed on that alter. Suddenly many people are not getting the weather warnings because they just happened to be watching it on another television station, and they probably did not even know that they could watch it on our station, or it just was a momentary convenience for them. The public service announcements, the advertisements from local stores—I mean, there is an awful lot that changes.

The law of unforeseen consequences is going to operate at a very high level, Senator,

Senator BRYAN. Well, I understand that, Mr. Fisher. I am certainly not antagonistic to local networks. Many of those people in our State are personal friends of mine. I have known them for years.

Mr. Hartenstein, what are the percentage of households in America that have television? It must be overwhelming, 90 percent-plus, 99 percent-plus?

Mr. HARTENSTEIN. Yes.

Senator BRYAN. What would that be? Do you have the number?

Mr. HARTENSTEIN. There are about 98 to 99 million television households. Mr. Kimmelman, I think, knows the statistics even better than I do.

Senator BRYAN. You agree with that, Mr. Kimmelman?

Mr. KIMMELMAN. Yes, close to full penetration; almost every household.

Senator BRYAN. To give us, again, some context in which this debate occurs, how many of those are DBS-served households?

Mr. HARTENSTEIN. Direct to home, which would include the bigger C-band dishes and the smaller ones, such as ourselves and Primestar and Echostar have, is getting close to about 10 million. DirecTV alone has about 4½ million of those.

Senator BRYAN. So, rather a small percentage of the total, then?

Mr. HARTENSTEIN. Yes.

Senator BRYAN. Is that a great concern, Mr. Fisher? It strikes me that those are pretty small percentages, in terms of the impact it would have upon you all locally?

Mr. FISHER. Sir, our ratings are measured in tenths of a rating point. The impact on us is extremely significant. A 5-percent drop in audience of this kind is one of the largest incursions into the system, that has been built up for decades, that will have ever occurred if it was legitimized.

Senator BRYAN. I understand. I am not trying to be difficult. The system was built up in decades. I happen to serve on the banking committee. We had Glass-Steagall based upon the experiences that we encountered right after the financial collapse and the Great Depression. Now, everybody in the industry across the board says, look, the old regulatory model simply does not work; the market dynamics have changed. I have been reluctant, quite honestly, to embrace that, but I accept it. I recognize that that does not make sense.

So, the fact that it has been done for decades may or may not be totally persuasive. Is there any indication that the market value of local affiliates has declined? Anecdotally, what I see whenever one of these is on the market in my State is that, indeed, they have gone up. That is wonderful. I am delighted for those folks who got into the market early and were able to profit handsomely via sale to another.

Is there any indication that has gone down in value?

Mr. FISHER. Well, I work for a private company. As I look at the public market values, actually, in recent months, there has been a somewhat serious drop in a number of the companies. A realtor once told me when I asked him, What is my house worth, he said, Exactly what somebody will pay for it on the day of closing.

Senator BRYAN. Sure.

Mr. FISHER. So, it is hard for me to answer that. I am not an economist. I can only say the economic pressures on us today are just enormous.

Senator BRYAN. Mr. Kimmelman, you look you have a comment.

Mr. KIMMELMAN. Yes, I just wanted to interject. Because I listened carefully to Mr. Fisher's response before, when he talked about all the important historical precedent and value in syndication rights, and syndicated exclusivity. The one thing he interestingly left out was the fact that we gave away all the spectrum for

free to the broadcasters, which was an important value, as well, because they were public interest requirements that went with it.

But I would suggest to you that that does tend to create a very high price in the marketplace for these properties. They are extremely profitable properties, because it is a monopoly right given by the government. So, things have changed. I share your sentiment about Glass-Steagall. I think, particularly in an environment in which, if we really are not in any way serious about going back to a world of regulation, we have to gauge these other equities much differently, because it is the consumer who is not getting choice.

While it is a small portion of the market, it is a fairly expensive price to pay. We want to see everyone in the market both be able to have that choice and be able to afford it.

Senator BRYAN. Thank you, Mr. Chairman.

Mr. FISHER. Senator, if I could just add a postscript.

I think your metaphor, the example of the banking industry, is actually a wonderful example. The real question is, is it different borrowing and saving your money in a national institution than in a purely local one?

I compare that to, is it different getting your information from a local company, from a great number of local companies, or only from national, out-of-town deliverers? I think that the commerce of ideas is very, very different than the commerce of money.

There is an issue that here is bedrock—and you have put your finger on it—it is whether localism survives. If the answer is localism is now outmoded, then you are led down a different path. We are here pleading that localism is really an important part of the fabric of this country's communication system, and that the changes that are being suggested would devastate it.

Senator BRYAN. I do not think most of us would disagree with that in terms of a preference. After all, we do have local interests and local communications that have distinct interests that need to be represented. I guess the challenge for us is we have got thousands of people, Mr. Fisher, thousands of people, in a small State like Nevada, who are writing us and telling us, look, come next week, terrible things are about to happen to us. And somehow we ought to be able to work out some kind of a framework to make that not occur.

Mr. Chairman, thank you very much. I appreciate your leadership. I thank the witnesses for their responses.

The CHAIRMAN. Thank you very much, Senator Bryan.

Mr. Kimmelman, how much have cable rates gone up since the 1996 deregulation?

Mr. KIMMELMAN. About 21 percent, on average, Mr. Chairman.

The CHAIRMAN. Twenty-one percent. And inflation in that 3-year period has been about 3 or 4 percent?

Mr. KIMMELMAN. A little bit higher, almost 6 percent through the 3-year period.

The CHAIRMAN. The reason I ask that question is that I would just like for a second to return to what we are trying to address here. On 31 March, the cable industry will be deregulated. So, we can anticipate, absent competition, that those rates will even go much higher. Is that a safe prediction, Mr. Kimmelman?

Mr. KIMMELMAN. I would say they have been going—given the poor job the FCC has been doing in overseeing them, I think you have been seeing unrestrained cable rates pretty much for the last 3 years. You will see this continue. The only caveat I would put is there seems to have been some voluntary willingness on the cable industry this year, given the March deadline, to hold back a little bit. My guess is that will disappear once we get well past that deadline.

The CHAIRMAN. So, our problem is that average citizens who subscribe to cable—in most communities there is no competitive cable company, although there is in a few of them—are really a captive audience. They want to receive the services, the entertainment and information they have grown accustomed to. They will pay higher and higher prices for that.

It is generally believed that there will be in the future more competition to cable in the years to come, as technology improves. By the way, I am of the belief that technology will improve and will ultimately resolve the must-carry problem a lot faster than maybe other members of the Committee believe.

But without, in the short term, satellite competition, satellite ability to carry local news and to have some kind of copyright relief, there will not be meaningful competition in the short term for cable. Would you agree with that, Mr. Kimmelman?

Mr. KIMMELMAN. Absolutely.

The CHAIRMAN. So, here we are, an article in the Washington Post this morning, a fancy satellite dish hanging outside of Rockville, pulling more than 150 channels. But, in a matter of days, it will not be able to pull in the most popular networks in the country. Then, by April 30, more than 2 million households could end up losing that news and information.

I strongly disagree, Mr. Fisher, with your assertion that somehow people who purchased dishes knew what a grade A contour was or a grade B contour or anything like that. I strongly disagree with that assertion. I believe that most people purchased these dishes because they thought they could get better news and information, and thought it was a good deal, particularly when they were seeing their cable rates skyrocket.

So, here we are with this situation. To make a long story short, we have been wrestling now for well over a year. The parties have failed to come together to try to get some resolution to this problem for the benefit of the consumer. The last time I checked, the satellite industry is doing pretty well in profits.

The last time I checked, Mr. Fisher, you are doing pretty well. You have some real challenges with the proliferation of channels, with major networks becoming just another appointment channel, and all those things. But, overall, profits in your industry have done rather well. Of course, we know about the profits of the cable industry.

So, here we are with this impasse. We have been trying to find some way out of it, not to benefit the satellite people, not to benefit the broadcasters, not to benefit the cable people, but to try to have average consumers, who are, in my view, innocent bystanders here, lose a service that they contracted for and never believed that they would be deprived of in the short term, and, in the long term,

meaningful competition to cable so that these dramatic increases in rates would be to some degree ameliorated by what, at least at this moment, is the only meaningful competition.

So, I urgently, on behalf of a lot of innocent people, ask you again to try to sit down—perhaps Mr. Kimmelman could serve as a mediator—or anybody else—and try to come up with some way to solve this problem. We have really worked hard on this issue. We have tried to be fair to everybody. We will continue to work. I will continue to take whatever time and effort is necessary if we could solve this problem.

Is it going to be the end of the world if 2 million people lose a service they have become accustomed to? No. But it certainly is, I think, something that we should try to avoid if we possibly can.

So, I would urge you again, the parties involved here, to please sit down and see if there is some way we can reach an agreement that clearly is not going to be totally fair to everybody. The arguments have been made very cogently on both sides of this issue. There is validity to both sides. But I would appreciate it very much if you all would sit down again and see if you cannot work something out.

We intend to markup this legislation. I would prefer not to, because there is going to be a lot of blood all over the floor, both here and on the floor of the Senate, which I would like to avoid, and address other issues. So, my plea is to please sit down and try again to negotiate some reasonable settlement, keeping in mind the average American citizen, at least 2 million of them, that, in my view, are the innocent victims of circumstances that certainly were not of their origin.

I would be glad to listen to any closing comments that you might have, beginning with you, Mr. Fisher.

Mr. FISHER. Thank you. Senator, let me just clarify one thing. Mr. Chairman, I in no way was suggesting most Americans had understood what they were getting into. Let me be very clear. I believe the overwhelming percentage of Americans had no idea they were being misled.

The CHAIRMAN. Thank you.

Mr. FISHER. I had taken your question to be, Did I know anybody? They have been misled. It is unfortunate.

If they were to sign up tomorrow, Mr. Hartenstein's firm would offer them an antenna. It would work. It would be, as he says, unbeatable. We would ask that that system now be implemented.

We have gone to the expense of court review. We have gone through yet another FCC review. We are where we indicated we thought we would be: the representation that most of these subscribers were illegal and most of them truly can receive us.

Let the satellite companies put an antenna into the homes where they did mislead the consumer who bought the dish. Let us see if that antenna works. If it does, Senator, the problem is over. We can all get on with what I think you correctly are stating are the real complexities and opportunities and challenges of the future.

It is no fun for me or our it to have to come here and fight over the past. There are a lot of places I would rather be—especially working with you and your staff and this committee on the future. This problem is almost over.

Your leadership, in some way, has pressed us to find ways to solve it that we perhaps would not have figured out had it not been for that pressure. For that, you have done a real public service. Let us get over this hump. Let us get the antennas in. Let us assure that Americans, through their antennas or through waivers, see over-the-air television.

The CHAIRMAN. Mr. Hartenstein.

Mr. HARTENSTEIN. Mr. Chairman, we have always come from the point of consumers first. We have not misled anyone. We have offered antennas from day one. As Mr. Fisher points out, the best solution is to get people's local channels. Because that is what they want. They want their local channels. They want their local newscaster, their local weather person.

Although recently there have been a number of disputes and substantial controversy, we have, in the past, always worked and been consistent in providing subscribers with broadcast signals, distant network signals, consistent with the law—the law being the Satellite Home Viewer Act, and the past practice in this area.

The FCC has just recently, with this last rulemaking, for the very first time, actually given some guidance. Although we believe there are more accurate models, with a better standard—and we urge you, as you have proposed in your legislation, to direct the FCC to do so—we will, and we have been since September, going forward with this method recommended by the FCC to qualify eligible subscribers.

The allusions were made earlier when Mr. Fisher pointed out the Seattle case. Certainly, I do not think Mr. Fisher or the broadcasters want to compare the activities of the criminals and previously convicted felons under the RICO statute that are selling devices intended to steal programming to consumers, your constituents, who are simply trying to acquire and pay for their programming. I hope that was not what was intended.

As to us benefiting financially, we have yet to make money. We lost \$100 million last year, and that was our fourth year in operation.

That said, we are prepared to take that issue off the table once and for all. I am prepared to commit here today to donate to charity the future profits we earn from the sale of CBS and Fox network signals to those grandfathered subscribers, as long as Mr. Fisher and his colleagues from the NAB are prepared to allow those subscribers to continue, until we can work, together with the NAB and Congress, and hopefully with some direction you give to the FCC, to resolve some of these issues.

I think this is an important step to put consumers first. I said before, we have a "b" in our name, broadcaster. It is ironic that we are at odds here, and hope to quickly get to a solution.

Thank you.

The CHAIRMAN. Mr. Kimmelman.

Mr. KIMMELMAN. Mr. Chairman, my suggestion is to schedule the markup, go forward. There is no time to wait. We are urging Senator Hatch to move forward on his copyright reform. The parties can keep talking, I guess, as they will keep talking until they finally face a vote. They will not resolve anything until they know what the votes are.

We need action here. We need more competition. You pointed it out quite clearly. There is no question about it.

All I would say is, please do not take it out on these 2 million consumers. I do not think they are at fault here.

But the issue is really much broader. When we are saying we want competition, we want you to go out and spend a lot of money on a lot of equipment—you cannot do anything else with that dish, you cannot do anything else with it, but get TV signals. There is no other use for it. Most people do not think they are that pretty either. They are not a decoration.

Let us make sure that people get value when they put all that money into it. Let us make sure that it is not just the 2 million, but that we do not have some ongoing fights going forward about whether people are receiving an offer for service that is appropriate, and they are going to have to go back and sue someone or they are going to have to go back and lose some signals they thought they were going to get.

That will chill competition. That will not promote it. It is more than just the 2 million consumers, Mr. Chairman. We need your legislation to get the FCC moving to clarify that situation. We need to hold those 2 million consumers harmless.

If there is any question here of a payment that needs to be made, if there is any question of whether the satellite industry was over-zealous in marketing its product, I would say make them use that ill-gotten money to discount future dish sales and installation costs, so the money is put to use to promote more competition, let us be forward-looking. If it is \$50 a subscriber, let us knock it off the dishes for the next million or 2 million subscribers who buy in. Let us get a promotion here that expands competition and does not look backward and does more for new consumers who want an alternative to cable.

Thank you.

The CHAIRMAN. Thank you very much. This hearing has been very helpful.

This hearing is adjourned. Thank you for being here.

[Whereupon, at 11:25 a.m., the hearing was adjourned.]

APPENDIX

PREPARED STATEMENT OF HON. OLYMPIA J. SNOWE, U.S. SENATOR FROM MAINE

Mr. Chairman, I would like to thank you for calling today's hearing on S. 303, the Satellite Television Act of 1999.

Put simply, S. 303 is intended to address two pressing consumer issues. First, the legislation seeks to address the needs of consumers who may be unwittingly harmed by an upcoming injunction against satellite companies that have illegally provided distant network signals to households within local broadcaster markets.

Second, when combined with its companion bill currently before the Senate Judiciary Committee, this legislation seeks to promote competition in the multichannel video programming market—a market that is currently dominated by cable companies.

Mr. Chairman, last July, our Committee held a hearing on the cost of cable television and the factors that have contributed to its steady rise. As was discussed at that hearing, the cost of cable television has grown at a rate significantly higher than inflation for the past several years, and consumers are understandably frustrated.

While a variety of proposals have been put forward to address these rising rates—including an outright freeze in cable rates at previous levels or extending the Cable Act for an indefinite period of time—it is clear that something needs to be done to address these rate increases, and promoting competition is likely the best long-term solution to the problem.

Accordingly, the intended effect of the Chairman's bill and a bill currently before the Senate Judiciary Committee, S. 247, is to make robust competition a reality. Specifically, S. 247 would allow satellite providers to rebroadcast local stations in the local market—an issue that currently impedes competition—while S. 303 provides the ground rules for the provision of these local-into-local signals, including the often contentious issue of "must-carry".

Mr. Chairman, while the steady rise in cable rates should be reason enough for Congress to pursue pro-competitive legislation, the upcoming injunction against satellite companies has only intensified interest in this issue. As today's witnesses are aware, the temporary injunction that will take effect on February 28—and the permanent injunction that will take effect on April 30—pertain to flagrant violations of the Satellite Home Viewer Act by satellite providers.

Although most agree that the court's decision was consistent with the statutory language of the Satellite Home Viewer Act, the fact remains that satellite subscribers in Maine and across the nation—who were the unwitting recipients of these illegally transmitted signals—stand to lose network programming this coming week. Needless to say, most—if not all—of these satellite subscribers would like to keep their distant network signals. As a result, they are frustrated and irate with the court's decision, and they want relief from the Congress.

The bill crafted by the Chairman attempts to strike a balance between consumers in the Grade B contour—who may arguably require distant network signals to receive clear programming today—and local broadcasters—who deserve to have their local markets protected until such time as satellite providers rebroadcast their signals in the local market.

As would be expected with any legislation that attempts to bridge the differences between competing interests, the industries affected by this legislation do not agree on its provisions. Specifically, it is my understanding that the satellite industry supports the current draft of the legislation while local broadcasters oppose it—and I'm sure that both sides would write the bill differently if they had the choice.

Nevertheless, in light of the imminent consequences to consumers of inaction, disagreements on specific details of this legislation must not prevent our Committee from addressing this issue in the near future. The bottom line is that we would not even be discussing this legislation today if not for the legitimate concerns of consumers. Therefore, we must not lose sight of consumers as we seek to move this legislation—and make appropriate changes to it—in the days ahead.

Because today's hearing will provide the affected industries with an important opportunity to vent their specific concerns with this legislation, I'm confident this will be both an informative and insightful hearing. Therefore, I would like to thank our witnesses in advance for joining us this morning.

In addition, I would like to thank you, Mr. Chairman, for calling today's hearing and for working diligently to find a mutually-agreeable solution to a serious and imminent problem for millions of consumers. Thank you.

PREPARED STATEMENT OF HON. ERNEST F. HOLLINGS, U.S. SENATOR FROM
SOUTH CAROLINA

Today the Senate tackles an issue in which consumers are caught in the middle between the satellite industry and the broadcast industry. The courts have found that the satellite folks are illegally providing distant network signals to some consumers. Broadcasters are very concerned that the actions of satellite providers detrimentally affect their advertising market and their revenues. In resolving these issues, consumers and competition must not be the losers.

While we must not reward illegal behavior, we must act to ensure that consumers can obtain their local network signals. Where they cannot receive their local network signals, they must be able to receive distant network signals. Industry and consumers must have a clear understanding of, and must abide by, the rules going forward. There must be no misinformation to consumers, and no repeat of this current debacle. Lastly, whatever action we take must promote competition. Cable rates continue to rise. However, where cable has experienced competition, rates have declined and services have improved. DBS offers competition to cable, and the actions we take must not jeopardize that reality.

Both the broadcast and satellite industries must work to make the consumer whole. In selling their services, satellite companies must ensure that consumers who are deemed served can get their local signals. That may mean accurately informing consumers of the rules of the game, providing information on antennas and basic cable services, and providing actual antennas. Ultimately, satellite companies may solve this issue by providing local service into local markets. When this occurs, I expect satellite companies to ensure that all consumers, including residents of my state are beneficiaries of this service. Where consumers cannot obtain a clear picture, broadcasters must quickly respond and appropriately address consumer requests for waivers.

It is my hope that the satellite and broadcast industries will set aside their differences and work to resolve the issues before us. I will continue to work with my colleagues to resolve this issue.

I thank the witnesses today for appearing and sharing their perspectives with us.

PREPARED STATEMENT OF HON. DANIEL K. INOUE, U.S. SENATOR FROM HAWAII

I thank Chairman McCain for convening this hearing. Consumers are caught in a fight between broadcasters and satellite service providers. Industry must find a way to put its disagreements behind it and work together on this issue.

Whatever action this committee decides to take, it must not sanction the illegal activities that some in the satellite industry have knowingly or unknowingly engaged in. Also, we must not solve this problem in such a way that it jeopardizes free over the air television.

S. 303 includes provisions to enhance the ability of satellite service providers to compete with cable operators. I applaud this effort. I am very concerned about cable rate increases and the reality that satellite service is the consumer's primary alternative to cable. For example, my home State of Hawaii, receives very little direct-to-home service. In fact, Alphastar, the primary provider of satellite service, went out of business sometime ago, and today no major provider serves Hawaii. As cable rates rise, the residents of Hawaii have no other real option to cable. I expect that as satellite companies pursue their market plans, that those plans will include service to my home State.

I look forward to working with my colleagues to address this issue. I thank the witnesses for sharing their concerns with us.

NATIONAL ASSOCIATION OF BROADCASTERS,
Washington, DC, February 25, 1999.

Hon. JOHN MCCAIN,
Chairman, Senate Commerce Committee,
Washington, DC.

DEAR MR. CHAIRMAN: In order to provide a more complete record for the Senate Commerce Committee's review of the Satellite Home Viewer Act, the National Association of Broadcasters submits the enclosed documents* to the record of the February 23 hearing on S. 303, the "Satellite Television Act of 1999." The documents were filed with the Federal Communications Commission in the matter of "Satellite Delivery of Network Signals to Unserved Households for Purposes of the Satellite Home Viewer Act—Part 73 Definition and Measurement of Signals of Grade B Intensity, CS Docket No. 98-201 and RM No. 9345."

December 11, 1998—Comments of the National Association of Broadcasters Exhibits to Comments of the National Association of Broadcasters

December 11, 1998—Joint Comments of the ABC, CBS, FOX, and NBC Television Network Affiliate Associations—2 volumes

December 21, 1998—Reply Comments of the National Association of Broadcasters Exhibits to Reply Comments of the National Association of Broadcasters

December 21, 1998—Joint Reply Comments of the ABC, CBS, FOX, and NBC Television Network Affiliate Associations

January 15, 1999—Supplemental Information

January 15, 1999—Supplemental Filing Concerning "Confidence" Input to Longley-Rice Propagation Model

Sincerely,

EDWARD O. FRITTS,
President & CEO.

PREPARED STATEMENT OF NORTHPOINT TECHNOLOGY, INC.

Northpoint Technology, Inc. submits the following statement for the record in connection with the February 23, 1999, hearing of the Commerce Committee on S. 303, the "Satellite Television Act of 1999." Northpoint presents a technology-based solution to both the local signal problem and the need to provide real competition to cable.

Northpoint Technology is an advanced, broadband, digital wireless system that has the capacity to offer all local television signals, analog and digital, with a full must carry obligation. The Northpoint service would operate in the 12 GHz band, reusing spectrum used by DBS operators. Its service can be provided on a wholesale basis to DBS carriers, and it can be offered directly to customers as a stand-alone service. In addition to carrying local stations, Northpoint will offer other multi-channel video programming and Internet service.

Northpoint already has a network of 68 locally-based affiliates, operating under the name BroadwaveUSA, with license applications, currently pending before the FCC, for all 211 local television markets. In order to deploy its service, the FCC must also act upon a rulemaking (ET Docket No. 98-206). Once regulatory approval is achieved, Northpoint's service can be deployed in the first markets in as little as six months, with nationwide coverage within two years.

Northpoint stands ready to solve the local to local signal problem once and for all, with full must carry and retransmission consent obligations. Northpoint and its affiliates are eager to launch themselves as an effective new competitor to cable, and are prepared to enter markets that have no near term prospects of a real competitor to cable.

AN EXCITING NEW TECHNOLOGY

The strength of Northpoint's technology is that it is very low cost. By reusing existing spectrum, existing off-the-shelf equipment that is already tested, proven and available at low cost, can be used to deploy the system.

Briefly, this is how the technology works: Northpoint takes proven and efficient satellite frequency-sharing principles and applies them to terrestrial earth-based broadcasting. For many years satellite carriers have been able to share frequencies with one another by spacing their satellites a sufficient distance apart. This "sharing geometry" is well known and understood, and it is the basis of all FCC satellite allocations. For example, DBS satellites are designed to share spectrum with one

[* Note.—The information referred to has been retained in the committee's files.]

another when they are at least 9-degrees apart. Satellites in other bands are able to share when they are as little as 2-degrees apart.

The reason this works is that satellites broadcast directionally from space to earth into reception dishes that are designed to see only a small part of the sky. Once these dishes are pointed at their chosen satellite, they cannot see the other satellites that are transmitting on the exact same frequencies. Northpoint's technology extends this frequency-sharing principle to terrestrial transmissions. By staying at least 9-degrees away from the beam of any DBS satellite, Northpoint will share the 12.2-12.7 GHz band with the DBS satellites, just as they share with one another. All DBS satellites orbit around the equator, and thus all North American DBS dishes point to the south. To receive our service, our customers will point their 12 GHz dish antennas to the north, hence the company's name, "Northpoint."

Each of Northpoint's local systems operate with a single headend where they will pick up and encode all of the local over-the-air signals, as well as other multi-channel video programming. The local systems will then retransmit this programming to customers on the 12 GHz band through a series of low-cost cascading cells, each with a transmitter serving just over a 100-square mile area. These cells will be strategically located in a terrain specific manner to include service to those parts of a community that are in a valley or over a hill. In the Northpoint system, most customers will have at least 3 directions to point their dish to pick up the service. These multiple line-of-sight options will enable better delivery of local broadcast stations signals.

LOW COST TO DEPLOY/LOW COST TO CONSUMERS

The Northpoint system can be deployed at low cost, made possible in part by the very small size of the Northpoint transmit antenna. Northpoint transmit antennas are only 10 inches tall, weigh less than 3-lbs and can be easily located on buildings and existing towers. This low cost deployment will enable Northpoint services to be available to consumers at low costs, and bring about market pressure to reduce the prices charged by our competitors. Northpoint anticipates that its basic package might be priced at under \$20.00 per month, approximately half the price of basic cable. It will also offer customers flexible programming options.

Because Northpoint will operate in the 12 GHz band, its service can use existing DBS customer equipment. Over 10 million antennas and set-top boxes are in the marketplace, having already reached an economy of scale that has fine-tuned the products and lowered the cost for purchase by consumers.

THE NORTHPOINT SYSTEM WORKS

Northpoint's system has been tested under experimental licenses since 1997, successfully demonstrating it can co-exist without harmful interference to existing DBS services, in both a rural and an urban area. Northpoint has filed detailed reports with the FCC on these tests that were conducted with the certification of outside engineers. For the month of December 1998, Northpoint operated its system in a single 100-square mile cell centered in downtown Austin, Texas. DirecTV advised that they had several thousand subscribers in the area, so Northpoint established a hot line to DirecTV's national call center and our transmission facility to address any interference issues. The customers could call DirecTV if they experienced a disruption in service, and Northpoint would turn off its transmitter to see if it solved the customer's outage. During the entire month Northpoint did not receive a single call on this hotline that was attributable to interference caused by its system. Northpoint continues operating under its experimental license in Austin today and still have not had any reports of interference.

This testing proved not only that Northpoint doesn't interfere with DBS, but it also demonstrated that the system is viable. Northpoint operated the system day and night, under a variety of weather conditions, including heavy rain, freezing rain and dense fog, with excellent results. Sites at almost 14 miles received a usable signal, and signals also penetrated through foliage.

LOCAL-TO-LOCAL SOLUTION

A key focus of the Satellite Home Viewer Act policy discussion has been to ensure that satellite customers have access to local signals. Northpoint's locally-based, terrestrially-delivered transmission system can be expeditiously rolled out at reasonable cost, in all markets. Northpoint's capacity is sufficient to carry all stations, and for that reason Northpoint will be able to comply with a full must-carry requirement. In fact, transmission of all local stations, analog and digital, is a key element of Northpoint's business plan. The Northpoint-type technology will help preserve

and expand the audience for local signals, and the NAB has recently endorsed this new approach.

DBS customers could receive local signals via Northpoint by direct subscription to the local BroadwaveUSA affiliate. In this case, the subscriber would be able to switch from terrestrial Northpoint programming to satellite DBS programming with a single click of the remote control.

The BroadwaveUSA affiliate network has also offered to make local signals available on a wholesale basis to DBS providers. Under this option, DBS providers would be able to have all local signals, in full compliance with all must carry requirements, available encoded in their own formats and integrated in their own program guides. To effect this solution, the DBS consumer will need a Northpoint antenna and a simple network interface device attached to the back of their existing DBS set top box. These upgrades are anticipated to cost \$50-\$100. In either case, Northpoint Technology provides a solution to the local signal problem.

PROMOTES TRANSITION TO HDTV

An aspect of the local signal issue is the capacity of satellite services to carry local-into-local HDTV programming, which will be even more bandwidth intensive than carriage of the 1,500 plus local over-the-air analog stations. Northpoint systems will be able to carry HDTV programming without compression because the locally-based systems will have adequate bandwidth to accomplish this job. Interestingly, Northpoint may actually be one of the first to provide HDTV transmissions into many markets, thus helping to facilitate a rapid transition from analog to digital technology.

A VIBRANT COMPETITOR TO CABLE

In addition to addressing the local-to-local problem by providing local signals to satellite carriers, Northpoint also intends to be a stand-alone competitor to cable. Northpoint's system has enough capacity to carry at least 96 channels, and the intention is to offer customers programming packages featuring dozens of cable-like channels in addition to local stations.

This competition will bring reduced prices to the consumer. Simply by rolling back last year's average 7.8% cable price hike, \$1.6 billion could have stayed in the pockets of consumers. Moreover, because Northpoint's programming will be digital, cable systems will have an incentive, not only to rein in prices, but also to upgrade their systems digitally.

Northpoint looks forward to competing head to head with the cable industry on price, quality and service, the traditional dimensions of excellence. With the end of rate regulation before us, it is essential that new entrants such as Northpoint and its BroadwaveUSA affiliate network have the chance to offer services to consumers.

PUTS RURAL CUSTOMERS ON PAR WITH URBAN/SUBURBAN COUNTERPARTS

While Northpoint is a good solution in an urban and suburban area, it has particular relevance in rural areas. Because it is a simple and inexpensive technology, it is economically feasible for it to be deployed in rural areas, where laying cable or fiber to sparse populations can be cost-prohibitive. Northpoint may be the first chance for rural consumers to gain access to low-cost digital services. Because a Northpoint system is wireless and uses low-cost repeaters to propagate its signal, its services can reach areas where cable has never served.

ACCESS TO THE INTERNET

The Northpoint system can offer consumers more than simply multi-channel video programming. It is also ideally suited for the delivery of high-speed Internet services. The technology is easily capable of burst transmission rates of 1.5 megabits per second or more. And because its systems are locally-based, communities will be able to use Northpoint's Internet gateway for locally-g geared uses, such as interactive distance learning, or the ability of parents to monitor children in day care. The possibilities of these broadband services are vast and very promising.

At the present time, Internet services offered through Northpoint Technology would have a telephone return channel, however, in the future Northpoint could also install a simple transceiver (that is, a combination transmitter/receiver) in the customer's home and provide an all-wireless Internet service, as well as potentially telephone service via a wireless local loop solution.

OPPORTUNITIES FOR SMALL BUSINESS COMPETITORS

Another aspect of the Northpoint system, related to its low cost, is its potential to bring new entrants into the telecommunications field. Northpoint's 68 BroadwaveUSA affiliates are led by capable local business and community leaders. The involvement of such people will bring greater local participation and diversity to the media marketplace.

THE FCC ROLE

In 1994 Northpoint first presented its concept to the FCC. The company received an experimental license in 1997 to operate in Kingsville, Texas, in a rural setting, and last year received a second experimental license to operate in Austin. On January 8, 1999, Northpoint and its 68 affiliates filed license applications to serve all U.S. television markets.

In order to operate in the 12.2–12.7 GHz band, Northpoint needs the FCC to make a few rule changes. Accordingly, a year ago Northpoint petitioned the FCC to operate a point-to-multi-point video and data terrestrial service in the 12 GHz band. The petition is currently the subject of a Notice of Proposed Rulemaking (ET Docket No. 98–206), with comments due March 2nd and reply comments due March 29th.

As part of the rulemaking, Northpoint seeks co-primary status with any other new entrants into this band. While Northpoint is willing to be secondary to existing DBS services, it must be co-primary with the low-earth orbiting satellites now under consideration, and Northpoint is fully confident this can be done with properly designed low-earth orbiting satellites. In fact, two of the LEO applicants are proposing systems which appear compatible with terrestrial sharing. Moreover, co-primary status would be consistent with applicable ITU regulations.

CONCLUSION

Given the need to address the local-to-local and cable competition issues, Northpoint hopes that Congress, specifically this committee, will encourage the FCC to act expeditiously on the rulemaking and applications. Thank you for providing Northpoint the opportunity to submit this statement for the record.

JOINT PREPARED STATEMENT OF SHARON MILLETT, 1999 PRESIDENT, NATIONAL ASSOCIATION OF REALTORS® AND MICHAEL SIMMONS, CPM, 1999 PRESIDENT, INSTITUTE OF REAL ESTATE MANAGEMENT®

Thank you for the opportunity to submit the comments of the NATIONAL ASSOCIATION OF REALTORS® and its affiliate the Institute of Real Estate Management®, on over-the-air reception devices. The NATIONAL ASSOCIATION OF REALTORS®, is comprised of more than 730,000 real estate professionals involved in all aspects of the real estate industry, including the owners and managers of multi-family rental and commercial property. The Institute of Real Estate Management® is comprised of over 9,000 property management professionals who manage over 24% of the nation's privately-owned residential apartment properties, and 44% of the nation's office buildings. Due to the increasing demands of tenants, and our member's desire to increase occupancy by meeting those resident's needs, we recognize the need and demand for a diverse and competitive telecommunications marketplace.

However, recent actions by the Federal Communications Commission place an unfair burden on private property owners. In October 1996 the Federal Communications Commission adopted the Over-the-Air Reception Device Rule which prohibits certain restrictions on a viewers ability to receive signals from direct broadcast satellite (DBS). The rule applies to viewers who have a direct ownership interest in the property and wish to place an antenna in an area that is within their exclusive use or control. The rule does not apply to common areas such as those within a condo association. In November of 1998, the FCC amended the rule to extend these privileges to rental property where the tenant has the exclusive control such as balconies, balcony railings, and patios. The extension of the Commission's antenna preemption rules to private property effects an unconstitutional taking of the property. Prohibiting a property owner from placing restrictions on the use of their private property is a clear violation of the owners' Fifth Amendment rights.

For the Commission to force building owners to allow the mounting of antennas of any kind on the owners' premises would constitute an unconstitutional physical taking of the property under *Loretto v. Teleprompter Manhattan CATV Corp*, 458 U.S. 419 (1987). *Loretto* not only stands for the proposition that requiring owners

to permit the placement of antennas on their properties would be a taking, but also for the proposition that to give such a right to tenants themselves is equally a taking. The fact that a property owner has invited the tenant onto the premises does not mean the owner has surrendered its Fifth Amendment rights. Giving the tenant the right to use the property in a new way constitutes a taking just as surely as if the government had attempted to convey full title in that part of the premises to the tenant.

Moreover, this ruling interferes with the ability of property owners and managers to insure compliance with safety codes; to provide for the safety of tenants, residents, visitors, neighbors, and passersby; and to maintain the structural integrity of their buildings. The FCC ruling also voids signed contractual agreements between landlords and tenants, which strictly forbid the placement of satellite dishes on balconies and patios. This does not impede consumer choice. When a consumer shops for a rental dwelling, they can shop for telecommunications services just as they would shop for other amenities such as a swimming pool, recreation facilities, parking, and other services. The marketplace will respond to these demands. If the owner chooses to restrict the installation of a satellite antenna by a tenant, he should have the right to do so, especially if the tenant signs an agreement obligating himself to these terms. This agreement should be honored just as any other legal agreement between two parties. It is our belief that the Commission lacks jurisdiction to regulate contractual agreements affecting private property and has no authority to regulate the real estate industry. The 1996 Act does not authorize interference with the landlord-tenant relationship or that arising from similar real estate agreements.

The ruling creates many practical difficulties for multi-family dwelling owners. For example, who will be liable if one of the antennas falls and injures a passerby? Owners and managers of real estate will be the targets of resulting litigation. One example of the dangers of this proposal occurred in an apartment building in Kansas. A resident attached a DBS antenna to a length of 2X4 lumber, by closing the window on the end of the 2X4 with the antenna outside, using a counterweight and the pressure of the window sash to hold the antenna and 2X4 in place. (See enclosed photographs.) This is hardly safe or practical, but what in this ruling can stop such risky maneuvers for the tenant who wishes an antenna and has no balcony or patio?

To imply that competition in the telecommunication industry is being stifled by individual property owners who do not wish to have holes drilled into their walls and unsightly cable wires draped across their walls to satisfy a tenant who does not maintain a long-term interest in the property, is unreasonable. Property rights should not be sacrificed for the sake of competition among service providers. The NATIONAL ASSOCIATION OF REALTORS®, and the Institute of Real Estate Management® agree with Commissioner Harold Furchtgott-Roth when he states in his dissent of the opinion that,

"I do not think that section 207 authorizes us to deprive landlords of their right to retains aspects of the right to use their property. Conversely, I do not think that section 207 authorizes us to bestow new property rights upon tenants—here, the right to use property for certain purposes—at the expense of landlords." And in conclusion, "For these reasons, and because the decision to extend OTARD rules to leased property is a generally unnecessary incursion on private property rights, I respectfully dissent."

The real estate marketplace is highly competitive and is responding to the desires of its customers. The Commission should not be allowed to supplant free-market regulation. Building owners benefit from satisfied residents and profitable tenants and occupants. Consequently, they have an incentive to establish policies that promote the well being of all residents. The real estate market is already responding to customer demand for telecommunications services. If they didn't, they would lose tenants and income.

Thank you for the opportunity to express our views. If you have any questions, or wish to discuss this further, please do not hesitate to contact us.





STANFORD UNIVERSITY LIBRARIES
 106-1 Hearing: S. 303. Satellite Telev
 Y 4.C 73/7:S.HRG.106-482



3 6105 05016094 9



